

RESOURCE MANUAL

for

ALABAMA REGULATORY
BOARDS and COMMISSIONS



Department of Examiners of Public Accounts

Ronald L. Jones
Chief Examiner

Introduction

I am pleased to provide this edition of the Resource Manual for Alabama Regulatory Boards and Commissions.

Recognizing the critical role of our state's regulatory agencies, the Sunset Committee of the Alabama Legislature directed that we develop training to help state regulatory agencies conduct their operations appropriately and in accordance with state laws. Our goal is to promote a better understanding of the roles and responsibilities of board members and their staffs, to outline legal requirements, and to share information we think will be beneficial.

This manual is intended as a general reference work providing an overview of the responsibilities and requirements imposed on regulatory boards and commissions. It is not intended to replace the advice of legal counsel.

I hope that the manual will become a valuable reference in conducting your operations.

The manual can also be found in the forms and publications section of our Internet website at www.examiners.alabama.gov

Ronald L. Jones,

A handwritten signature in black ink, appearing to read "Ronald L. Jones", written in a cursive style.

Chief Examiner
Department of Examiners of Public Accounts

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Section One: Regulatory Entities Generally

Important Reasons for the Existence of Regulatory Entities

There are many reasons for regulatory entities to exist. The most important is public protection. The unregulated practice of a profession or occupation can pose a danger to the health, safety, and well-being of the public.

Protection of the public is done by:

- Requiring persons or entities to be qualified before providing service to the public.
- Monitoring the practice of a profession or business to see that it is done in a competent manner according to accepted standards.
- Taking appropriate action when requirements are not met.

NOTE: These items are discussed in greater detail in *Section Nine*.

Additional reasons for the regulation of professions and occupations include:

- Public Acceptance – If the public is aware of an oversight/regulatory entity for a specific profession or occupation, they may feel more secure in using the services of the profession or occupation. The public also has an authoritative entity to address questions and concerns and to provide redress.
- Professional Integrity – A profession or occupation without an oversight entity may be perceived with less respect and trust. Incompetent and improper practice can discredit a profession. An oversight entity can discourage such practice and increase public trust.

Regulatory Entities and State Government

Alabama government is divided into three branches: the judicial branch, the legislative branch, and the executive branch. Each branch plays a role in the regulation of professions and occupations. Regulatory entities are primarily an administrative function of the executive branch of government.

1. Judicial Branch

The actions of regulatory entities can be appealed to the judicial branch, thereby making them accountable for their actions. Alternatively, the judicial branch may be called upon to enforce the orders of regulatory entities.

2. Legislative Branch

The legislative branch adds the weight of state law to the regulation of professions and occupations in Alabama by enacting regulatory legislation and by monitoring its implementation. Some entities of the legislative branch you may have contact with are:

- *Legislative Reference Service* – Writes bills and conducts legal research for the various committees and members of the legislature. The Administrative Procedure Division provides public access to regulatory rules and administers the process that creates those rules.

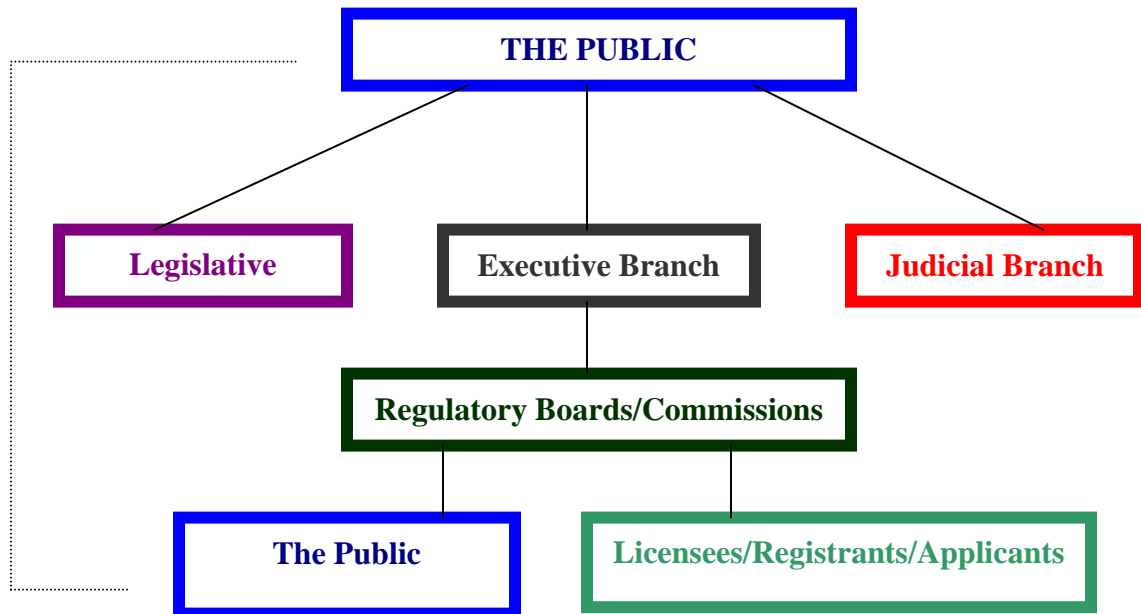
- *Legislative Fiscal Office* – The Legislative Fiscal Office researches and reports to the legislature on fiscal matters, including the budgets of state government.
- *Examiners of Public Accounts* – The Examiners of Public Accounts audits state agencies for compliance with state laws and acceptable practices in their operations.
- *Sunset Committee* – The Sunset Committee consists of legislative members from the Senate and the House of Representatives who are tasked with reviewing the operations of state agencies. The Examiners of Public Accounts act as agents for the Sunset Committee by conducting on-site evaluations of agency operations and reporting the results to the committee.

3. Executive Branch

The executive branch is responsible for the day-to-day operation of state government in accordance with the laws established by the legislative branch, subject to review by the judicial branch. The governor is the chief executive officer of the state. Other constitutional offices included in the executive branch that you may have contact with are:

- *State Treasurer* – The state treasurer acts as custodian of state funds.
- *State Auditor* – The state auditor is charged with auditing the receipts and disbursements of the state treasurer, and acts as caretaker of nonconsumable personal property (equipment, furnishings, and fixtures) in the custody of state agencies.
- *Attorney General* – The attorney general is the legal counsel for state government and controls the use of attorneys by state agencies.
- *Secretary of State* – The secretary of state has 1,000 plus duties, mostly dealing with the filing of public records, including acts of the legislature; acting as the official notary to the governor; overseeing elections; and performing business duties related to lands and trademarks, corporations, and the Uniform Commercial Code (UCC) filings. The secretary of state also acts as the repository for all filings of public notice of meetings for all governmental entities required to comply with the Open Meetings Act, as presented later in this manual.

Organization Chart



Section Two: Applicable to All

Regulatory practice in the name of the state cannot exist without specific authority granted in state law. Usually, a licensing law is created when persons seeking the establishment of licensing for a profession or occupation convince the legislature that unregulated practice harms or endangers the public health, safety, and welfare.

In addition to the provisions of their own enabling laws, licensing and regulatory entities in Alabama are subject to many other laws, rules and regulations, policies, and procedures of general application. Some are:

Federal Laws

- U.S. Constitution
- U.S. Code

State Laws

State laws restate or clarify federal laws or provide original law where federal law defers to the state or does not address the issue.

- ***Constitution of Alabama 1901***, as amended
- ***Code of Alabama 1975***, as amended, includes licensing/regulatory enabling laws and other general laws that are applicable, such as laws governing:
 - Travel Expense Reimbursements
 - Personnel
 - Administrative Procedures (Rule-Making)
 - Disciplinary Procedures (Due Process)
 - Ethics/Conflict of Interest
 - State Holidays
 - Itemizing Accounts Against the State
 - Competitive Bid Law/Request for Proposals
 - Review of Professional and Personal Services Contracts by Contract Review Legislative Oversight Committee
 - Posting Advance Notice of Meetings
- [Legislative] Acts of Alabama - Some are incorporated permanently into the ***Code of Alabama 1975***, and some are not. Your agency's enabling laws are incorporated into the ***Code of Alabama 1975***. Annual appropriations, which give agencies the authority to spend public funds, are not.

Administrative Rules

Administrative Rules are created by state agencies to explain, clarify, and interpret laws where the laws are not sufficiently specific.

Federal Rules

Code of Federal Regulations

www.gpoaccess.gov/ecfr/

State Rules

- Legislative Reference Service - Administrative Procedure Division Rules and Regulations – The division provides instructions on how to propose, adopt, amend, etc. rules and regulations subject to the state’s Administrative Procedure Act. The Alabama Administrative Code is a compendium of state agency administrative rules. The rules may be found at www.alabamaadministrativecode.state.al.us. Contact the Administrative Procedure Division of the Legislative Reference Service as shown in the contact list accompanying this manual.
- Personnel Department Rules (Employment of Personnel) – The *Personnel Department’s rules* and *Personnel Procedures Manual* contain information on personnel laws, rules, and regulations. Personnel Department rules have the full force and effect of law, once approved by the governor. *Personnel Department rules* and the *Personnel Procedures Manual* are not available on the Personnel Department’s web site www.personnel.alabama.gov ; but may be obtained by contacting the State Personnel Department as shown in the contact list accompanying this manual.
- Department of Finance Regulations – The *Department of Finance Fiscal Policy and Procedures Manual* addresses the processing and recording of financial transactions (receipts, disbursements, investments, purchasing, contracting, etc.). The manual is a regulation of the Department of Finance that has the full force and effect of law. The *Fiscal Policy and Procedures Manual* is available at the Procedures tab of the State Comptroller’s web site, www.comptroller.alabama.gov, or by contacting the State Department of Finance as indicated in the contact list accompanying this manual.
- State Auditor’s Office, Property Inventory Control Division – The Property Inventory Control Division publishes a property manual with instructions for the proper treatment of transactions involving the acquisition and disposition of nonconsumable personal property (equipment, furniture, etc.). The manual is available on the State Auditor’s web site, www.auditor.alabama.gov.

Reports to the Secretary of State

Act 2006-630 (codified as Section 36-14-17) requires the chair of an existing board, commission, committee, or task force having statewide or regional jurisdiction or application to provide the secretary of state certain information in electronic format by December 4, 2006. The information required includes the following:

- Name, mailing address, telephone number, and e-mail address of the board
- Name, date of appointment, term of appointment, and expiration date of term of each appointee to the board
- Name and position of the appointing authority

This information must be updated and posted to the secretary of state’s website by January 4th of each year. The chair of the board must notify the secretary of state by electronic means of vacancies, which will be published weekly by the secretary of state on the website.

Opinions

Opinions interpret laws, rules, and regulations when their meaning is not sufficiently clear. Authoritative opinions are issued by the following entities:

- *Attorney General's Office* – The Attorney General's Office, when asked in writing, offers opinions on the legality of proposed actions or activities when the laws or rules and regulations addressing the action or activity are unclear or appear to be in conflict. A formal Attorney General's Opinion is not law, but will protect the entity requesting it from prosecution in the event the opinion is later proven incorrect in a court of law. An opinion obtained after completing the act(s) or action(s) in question does not offer this protection. Attorney General opinions can be obtained by contacting the Attorney General's Office. Attorney General Opinions issued since 1979 are also available on the Attorney General's Office website, www.ago.alabama.gov
- *Ethics Commission* – The Ethics Commission issues opinions on matters involving conflicts of interest and violations of state ethics laws. Individuals can ask for the commission's opinion on the propriety of *proposed* actions. Ethics commission opinions can be researched at the commission's web site, www.ethics.alabama.gov, or by contacting the commission as shown in the contact list accompanying this manual.
- *Department of Examiners of Public Accounts* – When asked in writing, the Chief Examiner will respond to questions regarding the proper conduct of audit-related matters. Following the opinion offers no legal protection, but will prevent an audit finding. Copies of recent reports issued by the Department of Examiners of Public Accounts are available at the department's web site, www.examiners.alabama.gov, or by contacting the Examiners of Public Accounts as shown in the contact list accompanying this manual.
- *Courts* – The courts offer binding interpretation of laws, rules, and regulations, and rule on matters of law. Courts are also the final place for appeals of regulatory entity actions.

Executive Orders

Executive orders are directives issued by the governor, usually to address a specific problem until adequate legislation can be enacted or until the problem ceases to exist. Executive orders are numbered separately for each governor's administration, beginning at number one. Executive orders remain in effect until repealed or superseded. State law takes precedence over executive orders. Executive orders for the current administration are filed with and can be obtained from the Secretary of State's Office, Public Information Division, at (334) 242-7224, or by fax at (334) 353-8993, or by visiting the governor's website, www.governor.alabama.gov. There is no charge for copies to state agencies. At the beginning of each new administration, the executive orders of the prior administration are archived at the Department of Archives and History. **NOTE:** *Staff at the Secretary of State's Office wishes to receive requests for executive orders by fax.*

- Executive Order Number 5, dated May 25, 1993, by Governor Jim Folsom, citing the state's excessive cost of legal fees, set the hourly rate for attorneys employed by contract at no more than \$85.00 per hour; however, those attorneys who are employed because they possess an expertise in a particular field of law may negotiate for a higher rate, not to exceed \$100.
- Executive Order Number 2, dated January 13, 1995, by Governor Fob James, Jr., removed the \$100.00 maximum for attorneys, with payments in excess of \$85.00 for attorney services subject to the approval of the governor through his legal office for good cause shown.

Miscellaneous

- Recycling
Since April 19, 1990, all state agencies are required to have an approved plan for recycling. The *Code of Alabama 1975*, Section 22-22B-3, addresses specific requirements, as well as the development of an annual recycling plan and of reporting requirements. For assistance with a recycling plan, see the contact list in this manual.
- Use of Internet
Use of computers and the Internet to conduct business requires agencies to review laws and policies pertaining to Internet usage, including e-mail and records retention. Every agency should develop policies for the use of the Internet by employees. The policies should address such issues as appropriate use during office hours, malware prevention, and consequences if policies are ignored.
- Retention of E-Mail Records
E-mail messages are agency records subject to the same retention requirements as the same type of record in another format. The *Code of Alabama 1975*, Sections 41-13-21 and 41-13-23, prohibits a public official from destroying any public record without the approval of the state or local government records commissions.

Public records including e-mail messages have one of three different retention classifications, depending on the value of the records to the agency.

- Transitory Records – Transitory records are records of no meaningful value to an agency for documenting its work, and may be destroyed as soon as they are no longer needed. An example is a note sent to a co-worker coordinating lunchtimes.
- Temporary Records – Temporary records have documentary value but do not need to be retained permanently. An example is a public inquiry about the services of an agency.
- Permanent Records – Permanent records are programmatic records of the agency that have historical value because they document the function and duties of the agency. An example of this is complaints to the agency.

NOTE: For more information on record retention, contact the Department of Archives and History, Records Division, shown in the contact list in this manual.

- *Alternative Distribution and Publication of Materials Supplied to the Legislature, Per the Code of Alabama 1975, Section 29-1-25*

Reports and other documents provided to members of the legislature must be provided on the Internet. More specifically, any state agency, state department, or public agency required to supply paper copies of annual reports and other documents and materials to members of the legislature must develop and implement an alternative method of distribution and publication to accomplish this requirement.

The alternative method must include each of the following components:

- Notice provided to each member of the legislature, and at the beginning of each subsequent legislative term, that the state agency, state department, or public agency intends to display or post the report, document, or other material on the Internet. The notice shall include an explanation of how the information may be accessed and copied from the Internet.
- Display of the report, document, or material on the Internet for at least 90 days.
- A written offer to each member of the legislature after August 1, 2001, and at the beginning of each subsequent legislative term, of the opportunity to receive a paper copy of the material. If a member, at the time the notice is received or any other time, requests a paper copy of the material, the material shall be promptly provided.

Each state agency, state department, or public agency may promulgate necessary rules and regulations to implement this section. One example of reporting to the legislature via the Internet is that the Department of Examiners of Public Accounts, which is required to address its audit reports to the legislature, publishes all of the reports on the Internet.

Section Three: Contents of Agency's Enabling Statutes

Each agency has its own enabling statutes. The statutes for the agency define the legislative intent for the creation of the agency and set its powers and duties.

Responsibility - If the agency is a regulatory board or commission, all responsibility to conduct the agency's operation in accordance with these statutes rests with the board or commission.

Election of Officers

All regulatory agencies have a requirement to elect officers, usually annually. Having officers promotes orderly procedure. The chairperson/president and the recording secretary are expected to sign the minutes of meetings.

“The board shall elect annually a chair and a vice chair.” (*Code of Alabama 1975*, Section 34-17A-7(c) [Board of Marriage and Family Therapy])

Annual Report

Many state agencies are required to produce an annual report of the activities of the agency for the previous year. The governor is the official most often named in the law to receive the report, but the legislature and the secretary of state may also be named as recipients. Examples of statutes requiring annual reports include:

- “Keep a record of its proceedings and make an annual report thereon to the Governor and the Legislature.” (*Code of Alabama 1975*, Section 35-15B-5(8) [Licensure Board for Interior Designers])
- “The board shall annually submit to the Governor a report of its transactions for the preceding year. The board shall file with the Secretary of State a copy of the report submitted to the Governor.” (*Code of Alabama 1975*, Section 34-14A-10 [Home Builders Licensure Board])

Roster of Licensees

Frequently, maintaining a roster of licensees is a duty set by the enabling statutes of a state licensing/regulatory agency. If this requirement is included in your agency's statutes, it becomes a record that your agency must maintain. It is also a public record and must be maintained in a form accessible by the public. Some agencies maintain rosters on their websites, as well as in a form that can be provided on demand, either electronically or on paper. Some examples are:

- “Maintain an official roster showing the name, registration number, and address of all individuals receiving a certificate of registration and/or seal and authorization as a registered interior designer from the board, together with the date, term of the issuance, and the place or places of business where each respective individual is engaged in the practice of interior design, and a record of all renewals, revocations, suspensions, reinstatements, or other actions taken in regard to such persons.” (*Code of Alabama 1975*, Section 34-15B-5(11) [Licensing Board for Interior Designers])

- “Publish annually the rules and regulations promulgated by the board, a copy of the Dental Practice Act and to publish at least every two years a list of all persons licensed to practice under this chapter.” (*Code of Alabama 1975*, Section 34-9-43(11) [Board of Dental Examiners])

Subpoena of Witnesses and Records

Subpoena power must be granted specifically by law. It cannot be otherwise acquired. An agency cannot make administrative rules to create it.

- *Administrative Procedure Act* - The state’s Administrative Procedure Act grants limited subpoena authority to state agencies that are subject to the act, as provided by the *Code of Alabama 1975*, Section 41-22-12(c). This section grants the officer presiding over a contested case with the authority to issue subpoenas, discovery orders related to relevant matters, and protective orders in accordance with the rules of civil procedure. ***This section does not grant subpoena power for routine investigation by a board or commission to determine compliance with the agency’s enabling statutes***, but does grant subpoena power once noncompliance has been determined and the matter is brought to a hearing before the board or commission.
- *Agency Statutes* - The power to issue subpoenas during routine investigations is usually found in the agency’s enabling statutes. If the agency’s statutes do not specifically provide for subpoena power, the agency has only the limited subpoena authority granted in the Administrative Procedure Act (above). The wording in the enabling statutes that grants subpoena power needs to be carefully reviewed to determine whether compelling the attendance of witnesses and the production of documents or other evidentiary matter are both authorized. Some examples are:
 - “The board, or any committee thereof, shall be entitled to the services of the attorney general in connection with the affairs of the board, and the board shall have the power to compel attendance of witnesses, to require production of documents, to administer oaths and to take testimony and proof concerning all matters within its jurisdiction.” (*Code of Alabama 1975*, Section 34-2-39(b) [Board for Registration of Architects])
 - “In carrying into effect the provisions of this chapter, the board may, under the hand of its chairman and the seal of the board, subpoena witnesses and compel their attendance and may also require them to produce books, papers, maps or documents. Any member of the board may administer oaths of affirmation to witnesses appearing before the board.” (*Code of Alabama 1975*, Section 34-12-35 [Board of Registration for Foresters])

Fines

Two types of fines exist in the enabling statutes of regulatory agencies: criminal fines and administrative fines. Criminal fines are imposed upon a person convicted of a crime, and can only be imposed by the courts. Administrative fines can be imposed by the regulatory agencies. For an agency to levy an administrative fine, the fine must be specifically authorized in the agency’s enabling statutes and can be imposed only for the reasons named

in the enabling statutes. If the statutes are silent on administrative fines, they may not be levied.

- *Criminal Fine (for the courts only)* - “Any person who practices, maintains a school, maintains a salon, or acts in any capacity without a certificate or license when one is required pursuant to this chapter, or who otherwise violates any provision of this chapter, shall be guilty of a misdemeanor and fined no more than five hundred dollars (\$500) or imprisoned for no more than 90 days, or both. Any corporation which acts in violation of any provision of this chapter shall be punished by a fine of no more than one thousand dollars (\$1,000).” (*Code of Alabama 1975*, Section 34-7A-2 [Board of Cosmetology])
- *Administrative Fine* - “The board may levy and collect an administrative fine of not less than five hundred dollars (\$500) or no more than five thousand dollars (\$5,000) for any violation of any provision of this chapter or the rules and regulations of the board.” (*Code of Alabama 1975*, Section 34-8-4(a) [General Contractors Licensing Board])

Penalties

A penalty is a sum of money that the law exacts as punishment for doing some act that is prohibited, or for not doing some act that is required. The authority to charge a penalty must be specifically given in the law. Most state agencies are given the power to charge penalties as a part of their licensing and disciplinary authority. Again, only the type or amount of penalty that is allowed by law may be charged. If the law is silent regarding penalty fees, then none may be collected. If a penalty is set in the law, the conditions under which the agency levies the penalty cannot deviate from the conditions specified by law. For example, if a late license renewal penalty fee is set by law at \$20 and if the licensee is more than 30 days late, a regulatory board may not impose a \$20 fee for being up to 30 days late, a \$40 fee for being up to 60 days late, and a \$60 fee for being up to 90 days late. The board also cannot waive the fee or charge less than \$20 unless such authority is given in the law.

“If a licensee fails to renew his or her license within 90 days following expiration of the previous license, a late penalty of fifty dollars (\$50) shall be collected, upon renewal, in addition to the renewal fee.” (*Code of Alabama 1975*, Section 34-8-2 [General Contractors Licensing Board])

Board Member Compensation

Compensation paid to board or commission members for days spent conducting the business of the board or commission must be specifically granted in an agency’s enabling statutes. If the enabling statutes of a board or commission are silent as to compensation, then none may be paid. Compensation of board or commission members is a separate entitlement from travel expense allowances, and is paid in addition to travel expense allowances. In some statutes, compensation of board or commission members is termed “per diem”, which has led to confusion with travel expense allowances, which may also be termed “per diem”. “Per diem” and “per day” are synonymous terms. Compensation and travel expense allowances are both termed “per diem” only because they are both paid on a per day basis. Language in the statutes may set compensation at a specific amount or may give the board or commission the authority to set compensation. If a board or commission is allowed to set compensation,

it may be limited by conditions specified in the statute. Examples showing the different conditions under which compensation may be paid are as follows:

- “...and, in addition thereto, they shall receive the sum of \$50 per diem for every day not to exceed 10 days per year actually spent by the member upon the business of the board.” (*Code of Alabama 1975*, Section 34-13-23(c) [Board of Funeral Service])
- “Each member of the board shall receive a per diem fee of not less than fifty dollars (\$50) nor more than one hundred dollars (\$100) to be determined by the board for the time spent in the performance of official duties...In setting the per diem fee, the board shall give due consideration to funds which are available for that purpose.” (*Code of Alabama 1975*, Section 34-20-4(h) [Board of Examiners of Nursing Home Administrators])
- “...in addition to any daily compensation or allowance, if any, as may be provided by the board, in such amount as may be determined by the board...” (*Code of Alabama 1975*, Section 34-21-2(e) [Board of Nursing])

Normally, if compensation is due to a board member, it must be paid unless formally declined by the board member. However, Attorney General Opinion 2008-038 states that a member of a board, who is also a state employee or public official, cannot be paid compensation for both positions. State employees and public officials who serve on state boards are only entitled to receive compensation for the highest paid office, position, or employment, which is nearly always not their position on the board. However, such a member is entitled to receive travel expenses associated with the board position.

Section Four: Internal Controls

Definition

Internal controls are a collection of measures designed to provide reasonable assurance that financial or other data is complete and reliable, that assets are protected, and that laws and regulations are complied with. Management is responsible for creating and for monitoring these measures to ensure that they are being implemented.

Controls over Nonconsumable Personal Property (equipment, furniture, fixtures)

Some controls have been incorporated into state law, requiring that:

- Property is marked or tagged by the agency to identify the ownership of the property.
- Property is reported by the agency to the State Auditor's Property Inventory Control Division upon receipt
- Property is inventoried by the agency at least annually.
- Disposition of property is controlled by central state authority
- Property is inventoried by employees of the State Auditor's Property Inventory Control Division.

Controls over Disbursements

Some examples of disbursement controls are listed below:

- Prohibiting checks made payable to "cash"
- Prohibiting signing of blank checks.
- Only authorized person(s) sign vouchers or checks. Double signatures required for checks.
- Statements/invoices/claims (including travel claims from employees and board members) are verified for accuracy and compliance with transaction terms or state law before payment.
- Claims for payment must be fully documented and itemized.
- Payment of invoices by persons who do not collect or deposit receipts and who not approve vouchers or checks.
- Setup of new employees by someone who does not process payroll.
- Timely payment of invoices. See Attorney General's Opinions 83-432, 92-074, and 93-266 for more information.

Controls over Receipts

Control procedures should be designed to ensure that all funds due are received and deposited. Controls should be designed so that missing funds will be detected within the normal course of work. Some examples of appropriate controls are listed below:

- No cash transactions because of the ease by which cash can be lost, stolen, or misused.
- Prompt deposit or return of amounts received. Amounts not held pending receipt of further documents or information.
- Amounts on hand in a secure area with access limited.
- Checks restrictively endorsed immediately upon receipt.
- A record of all receipts kept and regularly reconciled to amounts deposited.
- Division of duties so that one person cannot both perpetrate and conceal theft or misuse of funds without being forced to solicit collusion from another person. For example, one

person should not receive the funds from unopened mail, record the receipt, complete the deposit slip, make the deposit, and reconcile the monthly statement.

- Safeguarding and regular inventory of blank pre-printed licenses or cards proving licensure.
- Use of control numbers on preprinted licenses and cards proving licensure and records of the disposition of all numbered items.
- Log of receipts reconciled to deposits.
- New and renewal licenses issued reconciled to amounts received.

Section Five: Board/Commission Membership

Members are Public Officials

Board or commission members become public officials upon appointment and are responsible for ensuring the proper operation of the agencies they head. They are considered officers of the state and public officials. All of the resources they control and their actions as members are subject to public accountability. Funds under their direction are public funds subject to the legal restrictions placed upon public funds.

Appointment

When the legislature enacts laws authorizing the creation of an entity for regulation of a profession or occupation, they establish requirements for the composition of the regulatory entity's controlling board or commission. Each board's composition and prerequisites for membership is unique. These may include:

Mandated Residency

- Must be an Alabama resident (all members of boards/commissions must be)
- Must be a resident of a specific congressional district
- Must have been a resident for a specific period of time

Mandated Composition

- Must be composed of a certain number of persons
- Must be composed of a specific number or type of professionals and/or consumers.
- Must be composed of a membership that is representative of the state population or licensed professionals

Mandated Professional Qualifications

Professional members must usually meet credentials, education and experience requirements.

- "...all of whom shall have been engaged for a period of four consecutive years in their profession as polygraph examiners prior to appointment to the board and engaged at the time of appointment as an active polygraph examiner..." [Polygraph Examiners Board]
- "...a graduate of a chartered chiropractic school or college, which required actual attendance in the school as a prerequisite to graduation; currently engaged in the practice of chiropractic and has been engaged in the practice in this state for at least five years; ..." [Board of Chiropractic Examiners]

Mandated Consumer Qualifications/Restrictions

Some boards must have consumer members, and some must meet conflict of interest requirements.

"One member of the board shall be a consumer member... Neither the consumer member, nor his or her spouse, shall be a chiropractor. The consumer member shall not be an immediate family member of a chiropractor, nor shall he or she be employed in the chiropractic field." [Board of Chiropractic Examiners]

Mandated Nomination/Election and Appointment

The selection of members is normally done by specific procedures incorporated into the enabling statutes, which may include:

- Appointment by a public official (governor, lieutenant governor, etc.)
- Nomination by professional association(s)
- Nomination by licensees
- Election by licensees in a specified district or at large

“There is hereby created a board to be known as the Alabama Board of Examiners in Counseling composed of seven members, appointed by the Governor of this state ... the Executive Committee of the Alabama Counseling Association, or its successor organization, shall submit to the Governor a list of qualified candidates for the board.”
[Board of Examiners in Counseling]

Senate Confirmation

Some appointments are required to be approved by the senate before selection is complete.

Terms and Succession

- Staggering of Terms - Appointments are normally staggered so the positions are not all filled at once with new members. The staggering of appointments is created by law and intended to ensure a sufficient level of experience among board members in conducting board business. The staggering must be preserved in future appointments, unless otherwise provided by law.
- Serving Beyond End of Term – Normally, a member may serve beyond his or her expiration of term if a replacement is not in place before the term expires. Attorney General’s Opinion 2005-070 supports this practice. Enabling statutes usually include a provision to this effect. This does not affect the beginning and ending date of terms.
- Ending of Terms - Appointments are normally to unexpired terms of a specific number of years. The terms end on specific, predetermined dates without regard to the dates of actual service by the members. See Attorney General’s Opinion 2005-066 for more information regarding unexpired terms. Additionally, Attorney General’s Opinion 2006-110 explains that terms of office of new board members begin upon the expiration of the previous members’ terms of office [not when they leave the service of the board]. Attorney General’s Opinion 95-169, regarding the appointment of members to fill positions vacated prior to their original term of office, states that replacements must be appointed to the unexpired portion of the term in question, that it is the legislature’s intent that terms continue to expire in accordance with whatever staggering scheme is incorporated in the entity’s enabling laws. Here are some examples:
 - Member A’s term is from October 1, 2001 through September 30, 2005. Member A resigns January 1, 2004. Member A’s replacement can only be appointed to a term ending on September 30, 2005, which is the original end-of-term date.
 - Member A’s term is from October 1, 2001 through September 30, 2005. As of September 30, 2005, Member A has not been reappointed nor has a replacement been appointed. Member A continues to serve, waiting for reappointment or replacement. A replacement is appointed January 20, 2006. The replacement’s

term must expire on September 30, 2009, four years from the expiration date of the Member A's term that ended on September 30, 2005, not on January 19, 2010, four years from the individual's appointment.

Term Limits

Some boards have limits on the number of consecutive terms a member can serve. Attorney General's Opinion 2005-040 states that a member of a board may not resign from the board and then be reappointed to another full term if the member is resigning for the purpose of circumventing the consecutive term limitations.

Removal of Members

The regulatory entity's enabling statutes may or may not address how and why members can be removed. Normally, members may not be removed by other members or by the appointing authority, unless specifically authorized by law, even if the member no longer meets the required qualifications. The lack of qualification must be proven in a court of law in a specific type of action known as "quo warranto" in order to force removal of the member.

Resignation and Rescinding a Resignation

Membership on a regulatory board or commission can be resigned at any time, for any reason. However, rescinding a resignation can only be done prior to the resignation taking effect. After the resignation becomes effective, the member cannot be reinstated and must be subjected to the regular process for becoming a new member. Attorney General's Opinion 95-00182 discusses this matter in greater detail.

General Requirements for Holding Office

Oath of Office – Many regulatory entity membership positions require an oath of office. These are usually filed in the secretary of state's office.

Immunity for Official Actions – The law normally grants immunity from litigation for good-faith actions made in one's official capacity. However, a member may be personally liable for acting outside of official capacity or authority given in the law.

Ethics Law Applies

The state's Ethics Law is found in the ***Code of Alabama 1975***, Sections 36-25-1 through 36-25-30. This law addresses many aspects of conduct by regulatory entity members and employees.

Conflict of Interest and Personal Gain

The ***Code of Alabama 1975***, Section 36-25-1(8), defines conflict of interest as "A conflict on the part of a public official or public employee between his or her private interests and the official responsibilities inherent in an office of public trust."

While a member of a regulatory board, you may be in a position to vote for a regulatory proposal that will affect your private business.

The ***Code of Alabama 1975***, Section 36-25-5(a), states, "A conflict of interest involves any action, inaction, or decision by a public official or public employee in the discharge

of his or her official duties which would materially affect his or her financial interest or those of his or her family members or any business with which the person is associated in a manner different from the manner it affects the other members of the class to which he or she belongs.”

The ***Code of Alabama 1975***, Section 36-25-5(c), states “No public official or public employee shall use...equipment, facilities, time, materials, human labor, or other public property...for the private benefit or business benefit of the public official, public employee, any other person,...which would materially affect his or her financial interest, except as otherwise provided by law or as provided pursuant to a lawful employment agreement regulated by agency policy.”

For instance: As a board member, you recommend and vote to purchase insurance from an insurance business owned by a family member who is also your dependent.

Disclosure of Confidential Information Prohibited

Section 36-25-8 states that “No public official, public employee, former public official or former public employee...shall *use or disclose confidential information* gained in the course of or by reason of his or her position or employment in any way that could result in financial gain other than his or her regular salary...”

Revolving Door Law

Section 36-25-13(d) states “No public official or public employee who personally participates in the direct regulation, audit, or investigation of a private business... or individual shall within two years of his or her departure from such employment solicit or accept employment with such private business... or individual.”

Notice of Representation for Fee

The ***Code of Alabama 1975***, Section 36-25-10, states, “If a public official or public employee ...*represents a client or constituent for a fee* before any...*regulatory body*...*notice* of the representation shall be given *within 10 days* after the first day of the appearance. Notice shall be filed with the commission in the manner prescribed by it...”

Notice of Contract

The ***Code of Alabama 1975***, Section 36-25-11, states, “Unless exempt pursuant to Alabama competitive bid laws ... no public official or public employee, ... shall enter into any contract to provide goods... unless the contract has been awarded through a process of competitive bidding ... All such contract awards shall be made as a result of original bid takings... *A copy of each contract, regardless of the amount ... shall be filed with the [Ethics] commission within 10 days after the contract has been entered into.*”

Bribes and Solicitations

The ***Code of Alabama 1975***, Section 36-25-12, states, “No person shall offer or give to a member or employee of a governmental agency, board, or commission ... and no member or employee of a regulatory body, shall solicit or accept a thing of value ... other than in the ordinary course of business...”

Statements of Economic Interest

The **Code of Alabama 1975**, Section 36-25-14, provides for the filing of a statement of economic interest by certain persons no later than April 30 of each year covering the period of the preceding calendar year.

Who Must File – Several classifications of people must file statements of economic interest. The following is a partial list of those required to file. See Section 36-25-14 for further details.

- Any appointed public official and public employee whose base pay is \$50,000 or more annually
- Members of the Alabama Ethics Commission
- Appointed members of boards and commissions having statewide jurisdiction (but excluding members of solely advisory boards)
- All full-time non-merit employees, other than those employed in maintenance, clerical, secretarial, or other similar positions
- Purchasing or procurement agents having the authority to make any purchase
- Directors and assistant directors of state agencies
- Chief financial and accounting directors

What General Information Must Be Reported – The statement of economic interest must contain the following information on the person making the filing:

- Name, residential address, business
- Name, address, and business of living spouse and dependents
- Name of living adult children
- Name of parents and siblings
- Name of living parents of spouse.

What Financial Information Must Be Reported? – The statement of economic interest must include a list of occupations to which one third or more of working time was given during the previous reporting year by the public official, public employee, or his or her spouse. Financial information is reported in two groups:

- Income
- Indebtedness

Failure to File – Section 36-25-14(d) states, in part, “If the information is not filed as required, the commission shall notify the person concerned...that he or she has 10 days to file the report...The commission may, in its discretion, assess a fine of ten dollars (\$10) a day, not to exceed one thousand dollars (\$1,000), for failure to file timely.”

Filing Inaccurate Information (Intentionally) – A person who *intentionally* violates any financial disclosure filing requirement of this chapter shall be subject to administrative fines imposed by the commission, or shall, upon conviction, be guilty of a Class A misdemeanor, or both.

Filing Inaccurate Information (Unintentionally) – Any person who *unintentionally* neglects to include any information relating to the financial disclosure filing requirements of this chapter shall have 90 days to file an amended statement of economic interest without penalty.

Employment by Regulated Person/Business

The ***Code of Alabama 1975***, Section 36-25-9(a), states that, unless expressly provided otherwise by law, no person shall serve as a member or employee of a state, county, or municipal regulatory board or commission or other body *that regulates any business with which he is associated*. The section continues:

“Nothing herein shall prohibit real estate brokers, agents, developers, appraisers, mortgage bankers, or other persons in the real estate field, or other state-licensed professionals, from serving on any planning boards or commissions, housing authorities, zoning board, board of adjustment, code enforcement board, industrial board, utilities board, state board, or commission.”

Please note that the section provides an exemption for members of state boards. No such exemption is provided for employees of the boards. According to Attorney General’s Opinion 2006-061, it would be a conflict of interest for a board member to be employed by his or her board. A board member may handle the administrative duties of the board without compensation other than as allowed by law.

“Business with Which Associated” Defined

The ***Code of Alabama 1975***, Section 36-25-1(2), defines “business with which he is associated” as, “Any business of which the person *or a member of his family* is an officer, owner, partner, board of director member, *employee* or holder of more than five percent of the fair market value of the business.”

For example, an employee of a board that licenses a business has a spouse working for that business. This is a potential conflict with the Ethics Law.

The Ethics Law should also be reviewed for the definition of “family”. It changes depending on position in state government.

NOTE: The State Ethics Commission offers specific training on the State Ethics Law and should be contacted as indicated on the contact list.

Attorney General's Opinion 2006-061 gives further guidance on board or commission members being hired by the board or commission to perform work other than his or her board member duties.

Reporting of Violations Required by Law

If you become aware of a possible ethics violation, there are specific reporting requirements that must be followed, subject to a charge of violation of the Ethics Law. The ***Code of Alabama 1975***, Section 36-25-17(a), requires every governmental agency head to file a report with the Ethics Commission within 10 days on any matters that come to his or her attention in his or her official capacity which constitute a violation of the state Ethics Law. Subsection (b) further requires all governmental agency heads to cooperate in every possible manner in connection with any investigation or hearing, public or private, which may be conducted by the commission.

NOTE: There is a United States Constitutional 5th Amendment exception to reporting a violation, if such reporting would result in self-incrimination.

Ethics Continuing Education Attendance

Executive Order Number 58, dated August 23, 2001, signed by Governor Don Siegelman, orders all departmental and cabinet-level officials and appointed agency directors to attend an "Ethics and Public Service Continuing Education" session every two years, for a minimum of two hours, beginning in the year 2002. Notification of upcoming training sessions may be found on the Ethics Commission website, which is included in the contact list in this manual.

Section Six: Administrative Procedures

Adoption of Rules

Rules are adopted to make the law functional. The power to adopt rules must be specifically given before a state agency can adopt rules and regulations, known as administrative rules. This power is bestowed on most state agencies in the powers and duties section of the agency's enabling statutes. Once the authority is granted, and unless specifically exempted, state agencies must conform to the Administrative Procedure Act (*Code of Alabama 1975*, Sections 41-22-1 through 41-22-27) with regard to the creation and adoption of its administrative rules. Rules not adopted in accordance with these procedures are not legally enforceable.

○ Administrative Procedure Act (APA) Compliance

The APA is intended to provide a minimum procedural code for the operation of all state agencies when they take action affecting the rights and duties of the public.

- The APA defines “agency” as every board, bureau, commission, department, officer, or other administrative office or unit of the state, including the Alabama Department of Environmental Management, other than the Legislature and its agencies, the Alabama State Port Authority, the courts, the Alabama Public Service Commission, or the State Banking Department, whose administrative procedures are governed by Sections 5-2A-8 and 5-2A-9.
- The APA defines a “rule” as each regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy, or that describes the organization, procedure, or practice requirements of any agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule or by federal statute or by federal rule or regulation; provided, however, all forms shall be filed with the secretary of the agency and with the Legislative Reference Service and all forms, except intergovernmental, interagency, and intra-agency forms which do not affect the rights of the public and emergency forms adopted pursuant to Section 41-22-5, shall be published in the Agency Administrative Code.
- The requirement for creation and the method of adoption for rules is detailed in the APA. The process embodied in the APA must be followed exactly or the rule is invalid and cannot be enforced. For detailed instruction, consult the Administrative Procedures Division of the Legislative Reference Service.
- Each state agency that makes administrative rules is required to designate a secretary and to file in the secretary's office a certified copy of each rule adopted. The agency is also required to make available for public inspection and copying, at cost, all rules and other written statements of policy used in the discharge of the agency's functions.
- Agencies must, in addition, make available for public inspection and copying, at cost, an index by name and subject of all final orders, decisions, and opinions which are issued after October 1, 1982, except those expressly made confidential or privileged by statute or order of court.

- Administrative Rules Cannot Enlarge the Law

Attorney General's Opinions have maintained that a state agency may not exceed in its rules the authority granted to it by the agency's enabling statutes. The area most frequently prone to improper enlargement is fees. An agency may only charge fees that are specifically allowed by law. If no specific authority is granted, then the agency may not charge a fee. Also, an agency may not add to or upgrade requirements named in the law for licensure through its rule-making authority.

For example, the enabling statutes of the hypothetical Alabama Furniture Movers Board mandate licensing master, journeyman, and apprentice furniture movers. Apprentice furniture movers must pass an examination to work as furniture movers. Higher levels of licensure are achieved through subsequent experience. The board adopts a rule that authorizes the board to issue a furniture moving permit to applicants who have taken the apprentice examination, but have not yet received notification of the results. In this way, the applicants can be hired and begin working in anticipation of passing the exam and becoming licensed apprentices. This rule would exceed the authority granted in the board's enabling statutes and is not legal. The board is authorized in the law to issue master, journeyman, and apprentice licenses. No additional permits are mentioned in the law. Consequently, the rule is an improper enlargement of the law, and the board cannot legally issue the permits.

Setting Fees

In their enabling statutes, state agencies are generally granted the authority to collect fees for licensing and regulatory activities, but for most, there are limits embodied in the law. Absent specific statutory authority, no fee can be charged. The following discussion addresses some of the conditions placed upon the charging of fees by language in the law.

- Fees Set by Administrative Action

The enabling statutes may grant the authority to charge fees for their activities and to set the amounts. Typically, the types of fees an agency can collect are named in the statutes, with discretion as to the amount partially or completely left to the agency. The rule-making process as outlined in the Administrative Procedure Act must be adhered to when setting or changing the fees. Examples of fees set by state agency action include:

- “Any person desiring a license to practice Veterinary Medicine in this state shall make written application in the English language to the board. The application shall show that the applicant is at least 21 years old, is a graduate of an accredited Veterinary School, and any other information and proof as the board may require pursuant to the administrative code of the board. The application shall be accompanied by application and examination fees in the amounts established and published by the board”. (*Code of Alabama 1975*, Section 34-29-72(a) [Board of Veterinary Medical Examiners])
 - “(a) The board shall admit to examination for licensure as a nursing home administrator ...Each candidate shall also be required, prior to admission to the examination, to pay an examination fee established by the board pursuant to its rule-making authority.

(b) The board may establish an application fee for the internship or administrator in training (AIT) program and a fee for preceptor, certification, and recertification of the administrator in training (AIT) program pursuant to its rule-making authority.” (*Code of Alabama 1975*, Section 34-20-9(a)(b) Board of Examiners of [Nursing Home Administrators])

○ *Cannot Exceed What is Allowed by Law*

Numerous Attorney General Opinions have maintained that, where the enabling statutes of an agency do not grant specific authority to set the type or amount of a fee, the agency cannot collect a fee through the rule-making process. If the law is silent on the issue of charging fees for a licensing or regulatory activity, then the agency has no authority to charge a fee for doing it.

- The hypothetical Alabama Board of Frisbee Throwers’ enabling statutes mandate that an applicant will provide proof of education, a completed application, and an application fee of \$80 to be licensed. In addition, the applicant must pass an examination prepared by the board. No fee for the examination is mentioned in the statutes. The board votes to charge a \$30 examination fee to cover the costs of preparing, proctoring, and grading the examination. As the examination fee was not included in the board’s statutes, the board has no authority to collect it. Upon discovering the examination fee is illegal, the board votes to increase the application fee by \$30 to \$110. As the application fee is set by law at \$80, this rule is also beyond the board’s authority.

Negotiated Settlements

The *Code of Alabama 1975*, Section 41-22-12(f), of the Administrative Procedure Act, provides that, “Unless precluded by statute, informal dispositions may be made of any contested case by stipulation, agreed settlement, consent order, or default or by another method agreed upon by the parties in writing.” This section authorizes negotiated settlements as a means of resolving a disciplinary action by a licensing/regulatory board against a licensee. The amount of any monetary settlement or other conditions agreed upon is not governed by the agency’s enabling statutes that provide for penalties and fines, but is set according to whatever conditions the parties to the case both agree upon. Funds received by state agencies through negotiated settlements can be deposited in the agencies’ operating funds.

Section Seven: Meetings

Mandated Meetings

Some enabling statutes have a minimum number of meetings that must be held. If so, the board or commission must hold at least that many meetings. Other aspects of meetings may be mandated by law, such as the location of the meeting or the purpose of the meeting. Usually, a provision is made for additional meetings. In some enabling statutes, a time period for advance notice of meetings to board members is provided. Here are some examples of mandated meetings:

- “The board shall meet at least four times a year on a quarterly basis with the board designating the months of the meetings for the coming year at its annual organizational meeting. Regular meetings shall be called by the chair who shall designate the time and place of each regular meeting. The chair or a majority of the members of the board may also call a special meeting of the board.” (*Code of Alabama 1975*, Section 34-21A-4(b) [Onsite Waste Water Board])
- “The board shall meet at least once each calendar quarter to conduct its business. Places of future meetings shall be decided by the vote of the members at meetings.” (*Code of Alabama 1975*, Section 34-27A-4 [Real Estate Appraisers Board])

Open Meetings Act

Who is subject to the Act?

The Open Meetings Act of 2005 effective as of October 1, 2005 is codified as Section 36-25A-1 et seq. in the *Code of Alabama 1975*. Under this law, all boards, bodies, and commissions of the executive and legislative branches of the state, including political subdivisions and municipalities, which expend or appropriate public funds; all multi-member governing bodies of the executive and legislative branches of the state, including political subdivisions and municipalities; all quasi-judicial bodies of the executive and legislative branches of the state; and all standing, special, or advisory committees or subcommittees, are to comply. Therefore, all committees and subcommittees of a governmental body are subject to this law. Only legislative party caucuses or coalitions, the Alabama appellate or trial courts, and voluntary membership associations which have not been delegated any legislative or executive functions by the legislature or governor are not affected.

What is a meeting?

Section 36-25A-1(a) provides that the act applies to the deliberative process of governmental bodies during meetings. Meetings are defined in Section 36-25A-2(6). Of the Open Meetings Act to include the following:

- The prearranged gathering of a **quorum** of a governmental body or a quorum of a committee or subcommittee of a governmental body at a time and place which is set by law or operation of law. [Set by law could mean state, federal or local law. Operation of law is not defined but would include setting of time and place for meetings in administrative rules or policies which the entity has the legal

authority to make. If the time and place is nowhere stated in the law, rules, policies, etc., this paragraph would not apply.]

- The prearranged gathering of a **quorum** of a governmental body or a quorum of a committee or subcommittee of a governmental body during which the body, committee, or subcommittee of the governmental body is authorized, either by law or otherwise, to exercise the powers which it possesses or approve the expenditure of public funds. [Once a quorum is met, a governmental body has the authority to exercise the powers it possesses. Consequently, if a quorum of a governmental body is present at a prearranged gathering, then the gathering is a meeting, as defined by this paragraph.]
- The gathering, whether or not it was prearranged, of a **quorum** of a governmental body or a quorum of a committee or a subcommittee of a governmental body during which the members of the governmental body deliberate specific matters that, at the time of the exchange, the participating members expect to come before the body, committee or subcommittee at a later date. [This paragraph defines a meeting to include preliminary gatherings of members at which members meet prior to an “official” meeting. These preliminary gatherings are considered meetings and must be open to the public, if a quorum of members is present.]

All other gatherings are **not considered meetings**. The Open Meetings Act specifically names some gatherings that are not considered meetings.

- Occasions when a quorum of a governmental body, committee, or subcommittee attends social gatherings, conventions, conferences, training programs, press conferences, media events, or otherwise gathers so long as the governmental body does not deliberate specific matters that, at the time of the exchange, the participating members expect to come before the governmental body at a later date. [Note the highlighted condition for this exception to apply.]
- Occasions when a quorum of a governmental body gathers, in person or by electronic communication, with state or federal officials for the purpose of reporting or obtaining information or seeking support for issues of importance to the governmental body.

How far in advance must notice be posted?

The Open Meetings Act requires advance public notice for every meeting of entities within its jurisdiction. The act defines a meeting, how far in advance notice of the meeting must be posted, where the notice is to be posted, and the contents of the notice.

For nearly all licensing/regulatory boards, the Open Meetings Act does not provide the minimum number of days to routinely post advance notice of meetings. The act states that notice must be posted as soon as “practicable” after the meeting is called, but not less than 24 hours. Practicable is legally defined as

“reasonably possible”..Consequently, once a meeting is called and the time and place are known, notice must be promptly posted.

- For example, at the end of a meeting, the board sets the time, date, and place of its next meeting three months later. The next meeting is posted one month before it occurs. The posting does not meet the notice requirements of the Open Meetings Act because the meeting was not posted as soon as reasonably possible after it was called.

If a licensing/regulatory board sets the time, date, and place for all meetings in the upcoming year at once, the entire schedule should be posted as soon as reasonably possible. Amendments can be made as necessary.

Minimum Seven Day Notice – An exception allows some boards or commissions to post advance notice routinely within seven days of a meeting. To qualify for this exception, the time and place of meetings must be set by law or operation of law. **Code of Alabama 1975**, Section 36-25A-3(a). “Set by law” can include state, federal or local law. “Operation of law” can include instances where the time and place is set within a board’s administrative rules. If the time and place is nowhere stated in the law, rules, policies, etc., the seven-day notice requirement does not apply.

Minimum One Hour Notice - Under the following conditions, notice can be given as soon as practical, but in no case less than one hour before the meeting is to begin. Since the following conditions for the one-hour notice are named in the law, no other conditions can be used to authorize the minimum one-hour notice. Note that the one-hour notification is a minimum and that longer notice should be given as soon as it is practical to do so. The conditions necessary for this exception are:

- Notice is prevented by emergency circumstances requiring immediate action to avoid physical injury to persons or damage to property.
- Notice relates to a meeting to be held solely to accept the resignation of a public official or employee. No other business can be conducted while accepting the resignation.

Where should notice of meetings be posted?

The Open Meetings Act directs notice of meetings to be posted to the Secretary of State’s Internet Website at www.sos.alabama.gov for state agencies with statewide jurisdiction. The notices remain on the website indefinitely and include the date the posting occurred. A return e-mail confirms the posting. These e-mails should be retained to prove compliance with notification requirements of the Open Meetings Act. Posting locations for other entities are also addressed in the act.

What should be posted

Notification must include the time, date, and the nature of the meeting. If a preliminary agenda is available at the time of notification, this must also be included. If there is no preliminary agenda, a general description of the nature and purpose of the meeting must accompany the notification.

Direct Notification

The Open Meetings Act also requires direct notification to interested parties when the parties so request. The agency can set reasonable rules for direct notification, and can charge or request advance payment for the cost of direct notification. Any reasonable method of direct notification can be used, such as e-mail, phone, fax, etc.

Meeting Protocol

Parliamentary Procedure -In order to keep order and allow the recording of adequate minutes, each agency should adopt parliamentary procedures to govern its meetings.

Minutes - Minutes should be kept to record the official actions of a board or commission. The Open Meetings Act requires that the agency record the date, time, place, members present and absent, and any actions taken by the agency during the meeting. The Department of Archives and History has posted a procedural leaflet on its website that is a useful guide for producing proper minutes and making them available to the public. This leaflet is the guideline used by the Examiners of Public Accounts when reviewing meeting minutes during an examination. **Minutes should not be taken in executive sessions or when there is no quorum.**

Voting – In nearly all circumstances, the Open Meetings Act requires that votes must be taken in public. Secret voting is not allowed. Voice voting is allowed.

- Recording of Meetings - The Open Meetings Act allows the media and the public to record meetings via tape recorder, video camera, and photo camera.

Executive Sessions

Definition - The Open Meetings Act allows the public to be excluded from some board business by holding non-public portions of meetings termed 'executive sessions'.

Reasons to Hold Executive Sessions - the allowable reasons for holding executive sessions are provided in detail in the Open Meetings Act in the **Code of Alabama 1975**, Section 36-25A-7. The Attorney General has stated in his opinions that executive sessions cannot be held for other reasons.

- AGO 2006-068 states that regional planning commissions cannot go into executive session to discuss the credit and financial records of applicants because there is no provision in the Open Meetings Act to allow an executive session for that purpose.
- AGO 2006-088 – states that the Open Meetings Act permits governmental boards to convene an executive session to interview current public employees in connection with promoting these employees to fill vacant positions when those positions do not require the interviewee to file a Statement of Economic Interests with the Alabama Ethics Commission and only those portions of the meeting that involve the general reputation and character, physical condition, professional competence, mental health, and job performance of the employee are discussed in executive session. The professional competence of a person may be discussed in executive session only when that person's position qualifies as a profession as specified in section 36-25A-2(8) of the Code of Alabama.

Procedure to Enter Executive Session - To enter executive sessions, a quorum of members must first convene a meeting in public. After the meeting is convened, a majority of members must vote in public to enter executive session. The vote must be recorded in the minutes by individual name. The reason for entering the executive session must be recorded in the minutes. Some reasons require additional certification and documentation requirements, which are specified in the ***Code of Alabama 1975***, Section 36-25A-7, which is a part of the Open Meetings Act. There must be an announcement stating when or if the public portion of the meeting will resume.

Quorum

Definition - A quorum is the number of people required to be present before a meeting can conduct business. The ***Code of Alabama 1975***, Section 41-22-3(8), defines a quorum as no less than a majority of the members of a multimember agency, unless provided otherwise by statute. In Opinion 93-095, the attorney general stated that if vacancies occur on a state agency, a majority of the remaining members would constitute a quorum. The Open Meetings Act also counts as part of a quorum those individuals who have not officially taken office, but who come to a “pre-swearing-in” meeting.

Necessity for a Quorum – A quorum is necessary even to convene a meeting. No board or commission business can be conducted without a quorum present and no minutes should be taken. In his opinion 83-397, the attorney general stated that actions taken by a state agency without a quorum present were void.

Physical Presence of Members is Necessary to Establish a Quorum – To be counted toward establishing a quorum, a board member must be physically present. The Alabama Supreme Court ruled that a quorum must be physically present to do business, and that telephoning cannot constitute a quorum. (*Penton*

v. Brown-Crummer Inv. Co., AL Supreme Ct 1/23/1930, 222 Ala. 155, 131So.14.) The attorney general, in his opinion dated 11/6/78 to J. Al Poe, Mayor of Cordova, affirms that a quorum consists of persons who are physically present, and cannot be made of members attending via teleconferencing technology (telephone, video, etc.), nor can a quorum be constituted by proxy or through designees. Attorney General's Opinion 2006-071 also states that, to be counted towards establishing a quorum, board members attending meetings that are subject to the Open Meetings Act are required to be physically present. Text messaging also is not an allowable way to include an absent person as present.

There are at least two exceptions provided by law to the requirement for the physical presence of members in order to be counted and to vote. The exceptions apply only to the agencies in whose enabling statutes they exist.

- *The Alabama Port Authority*
Code of Alabama 1975, Section 33-1-8. Board of directors. (d) The board shall meet monthly on the call of the chair, who shall designate the time and place. The chair also may call special meetings. A quorum of the board for any regular or special meeting shall consist of not less than five members. At least two meetings per year shall be held outside the metropolitan Mobile area in a place selected by the chair. Board members shall be given at least 10 days' notice of regular meetings and five days' notice of special meetings, except that, if, in the judgment of the chair, urgent business so requires, the chair may give such shorter notice of a meeting as is practicable. *Members of the board or any committee thereof may participate in meetings of the board or such committees by telephone conference or similar communications equipment through which all persons participating in the meeting can hear each other at the same time, and such participation by the members shall constitute presence at a meeting for all purposes.* The director of the port authority shall give notice of any meeting to the media as the board and the director together consider appropriate under the circumstances.
- *State Board of Medical Examiners*
Code of Alabama 1975, Section 34-24-361. Investigations; reporting offenses; proceedings and actions; privileged information.
(f) The commission shall, temporarily, suspend the license of a physician or osteopath without a hearing simultaneously with the institution of proceedings for a hearing provided under this section on the request of the State Board of Medical Examiners if the board finds that evidence in its possession indicates that the physician's or osteopath's continuation in practice may constitute an immediate danger to his or her patients or to the public. *The commission may meet by telephone conference call to act upon any such request.*

Section Eight: Public Records

What are Public Records

The ***Code of Alabama 1975***, Section 36-12-40, grants citizens the right to inspect and copy *public writings*, with the exception of public library registration and circulation records.

A “*public writing*” is a record that is reasonably necessary to record the business and activities required or carried on by a public officer so that the citizens can know the status and condition of such business and activities. The ***Code of Alabama 1975***, Section 41-13-1, states, “...the term ‘public records’ shall include all written, typed or printed books, papers, letters, documents and maps made or received in pursuance of law by the public officers of the state, counties, municipalities and other subdivisions of government in the transactions of public business and shall also include any record authorized to be made by any law of this state belonging or pertaining to any court of record or any other public record authorized by law or any paper, pleading, exhibit or other writing filed with, in or by any such court, office or officer.”

The Alabama Department of Archives and History has on its website www.archives.alabama.gov a leaflet, *Providing Access to Government Records*, which gives guidance concerning public access to records. To access the leaflet, click on the link “For State and Local Officials”. Then click on the links labeled “Publications” and “General”. The leaflet will be listed in the general publications section.

The rule of reason must be applied when determining which records the public can view, how the viewing will occur, and when. A state agency has the right to promulgate reasonable rules governing the inspection process. For example, an agency could require that records be viewed only by appointment, and that the viewer complete and submit a request form stating the record or records desired. Rules to prevent the unnecessary inconveniencing of staff who must locate and retrieve records would be considered reasonable. Attorney General Opinion 2007-001 states, “Because a state agency may regulate the manner in which public records are produced, inspected, and copied, a state agency, to be in compliance with Sections 36-12-40 and 36-12-41, is not required to distribute public records in the manner that a requestor specifies.”

Some records, although created by public officials and employees, are deemed sensitive and can be exempted from public inspection. Recorded information received by a public officer in confidence; sensitive personnel records; pending criminal investigations; and records, the disclosure of which would be detrimental to the best interests of the public, need not be disclosed. (*Blankenship v. City of Hoover*, 590 So. 2d 245, 248 (Ala. 1991))

Attorney General Opinion 2007-031 gives guidance on additional types of writings that are not considered public records.

Attorney General Opinion 2008-030 states “The criminal complaint supporting an unexecuted arrest warrant is not subject to disclosure under the Open Records Act. Once

the warrant has been executed, the complaint supporting the same becomes public record.”

Attorney General Opinion 2008-073 states “...(Commission) must make available, for inspection and copy, time sheets of employees...Certain sensitive information, however, that may be contained in those records, such as doctor’s excuses or time off taken for medical reasons or personal vacation time, is not public record. Other information that may be contained in the records requested, such as medical history, confidential recommendations for employment, drug or alcohol testing results, home addresses, telephone numbers, social security numbers, and marital status of public employees, are not public records and are not subject to disclosure. The custodian of records responding to these requests for public records should ensure that the aforementioned sensitive personnel information is redacted from any publicly disclosed records.”

Attorney General Opinion 98-00161 states, “A custodian of public records may recoup reasonable costs incurred in providing public documents to a citizen, including, where necessary, costs for preparation of the records, and the actual cost of copying the records, but may not recoup the cost of attorney’s fees incurred in determining whether the public writings are subject to an exception that would prevent their release to the public.” Other opinions indicate that the fees charged for providing copies of public records must be based upon the actual incremental cost incurred by the agency, and not upon the recipient’s use of the records or the agency’s need for additional funds.

Responsibility to Keep Records

Every agency is obligated to create and maintain records to adequately document the business of the agency. These records are evidence of agency operations and serve as a mechanism of accountability. Effective record-keeping also helps to ensure that records will be legally admissible in court.

The following state law in the *Code of Alabama 1975* charges public officials to meet these obligations:

Section 36-12-2 requires officials to create and maintain records that provide full and detailed information regarding the office’s business and activities

Section 36-12-2 requires officials to protect and preserve records from mutilation, loss, or destruction

Section 36-12-4 requires officials to transfer all current records pertaining to agency business affairs or transactions to any successors in office

Section 36-12-5 requires officials to contact the Alabama Department of Archives and History when records pertaining to the conduct of office business cease to be current

Section 41-5-23 requires officials to keep the office’s books, records, and accounts, and to make reports in accordance with procedures and forms prescribed by the Chief Examiner of Public Accounts for audit purposes

Additional requirements may be set forth in other provisions, including an agency’s enabling statutes, legislative acts, or oversight authorities.

Records Media

Public records include records in all types of media, including electronic format. The Department of Archives and History has posted technical guidance on determining what constitutes a record and how to preserve it on its website. Click “Records Storage” on the “Publications” page.

Administrative Procedure Act Index of Formal Orders

The ***Code of Alabama 1975***, Section 41-22-4(a)(4), requires all agencies that must comply with the state’s Administrative Procedure Act to make available for public inspection and copying, at cost, an index by name and subject of all final orders, decisions, and opinions which have been issued after October 1, 1982, except those expressly made confidential or privileged by statute or order of the court.

Records Disposition Authority (RDA)

The ***Code of Alabama 1975***, Section 41-13-21, states, “No state officer or agency head shall cause any state record to be destroyed or otherwise disposed of without first obtaining approval of the State Records Commission...”

RDA - To ensure that state records are appropriately preserved, the State Records Commission requires state agencies to prepare, adopt, and approve a records disposition authority, or RDA. The RDA list all records of the agency and detail a destruction schedule for them, depending on the sensitive/historic/relevant nature of the records. The Department of Archives and History must be contacted to assist agencies in beginning the RDA creation process. *Please note* that the e-mails received from the secretary of state’s website confirming the posting of the public notice of board meetings has been included in recent RDAs. Standards set by the Department of Archives and History require that these e-mail confirmations be retained for at least three years, or until an examination or audit of that time period has been completed, whichever is longer.

Annual Report - Once an agency has an RDA approved by the State Records Commission, the agency is required to submit an annual report to the commission. The commission publishes compliance with their requirement on the website of the Department of Archives and History. The examiners use this posting during the compliance examinations it performs of state agencies, boards, and commissions.

Guidance on Records Issues

See the Archives and History website for informational and technical leaflets and publications, such as the following:

- *Developing An Agency Records Disposition Authority*
- *Legal Admissibility of Public Records*
- *What a Public Official Needs to Know About Records Maintained on Digital Imaging Systems*
- *Managing State Records in Alabama*
- *Guidelines for Managing E-Mail*
- *Making a Case for a Records Management Program*

- *Public Officials: Your Records Responsibilities and the Law*
- *Records Storage Centers: Construction, Environment, Containers, Shelving, and Security*
- *Guidelines for the Preservation and Transfer of Agency Website Records*

Off-Site Storage and Back-Up

The ***Code of Alabama 1975***, Section 36-12-2, requires state agencies to protect and preserve records from mutilation, loss, or destruction. Please refer to your agency's Records Disposition Authority, as it may reference a requirement for off-site storage and back-up of information.

The events of September 11, 2001, as well as the loss suffered due to Hurricane Katrina, demonstrate the importance of backing up information and storing information off-site. Many companies lost valuable information in the attack and hurricane due to inadequate back-up and storage procedures. Information that is vital to the operation of your agency should be backed up, and the back-up records should be safeguarded, tested, and available for recovery. Licensing information, disciplinary information, state agency decisions/processes/actions, grant applications, or any information necessary to your agency that is not backed up elsewhere should be captured, updated periodically, tested, and stored off-site in an appropriate secure area. Back-ups or updates to the back-ups should be made frequently. Records recovery plans for disasters should be a part of your agency's procedures, and responsibility should be assigned to specific agency personnel. A disaster that destroys records does not have to be as profound as the September 11th attack or Hurricane Katrina. A broken water pipe or a fire can destroy paper records and computer files or make recovery of the information a long and costly process.

Section Nine: Public Protection Responsibilities

The primary reason for laws requiring individuals who practice a profession or engage in an occupation to be registered, certified, or licensed is to protect the public. Registration, certification, and licensure, as defined below, have different meanings, but are often used by regulatory agencies interchangeably to describe operations.

- *Registration*
Registration is a recording of individuals in a like classification, profession, or occupation when there is no determination of qualification or regulatory activity by the registering agency. (i.e., a register of all tattoo artists in the state of Alabama).
- *Certification*
Certification recognizes competence by granting credentials where pre-determined qualifications are met (i.e., the certification of a person as a mine foreman or fire boss). The certifying agency exercises no regulatory activity.
- *Licensure*
Licensing is the granting of authority to engage in the practices of a profession or occupation. Licensing includes regulation by the licensing board. When licensing is required, a person cannot legally practice a profession without having obtained a license and agreeing to follow the law and the licensing board's regulations, with the understanding that failure to do so may result in disciplinary action. Licenses must be renewed periodically, often conditioned upon a certain amount of continuing education. Ongoing regulatory activity, such as inspections or complaint investigation resulting in disciplinary actions, normally occurs.

Licensing Issues

Only as Authorized by Law

A state board has no authority to act outside the limits set by its enabling statutes. Where the law addresses a matter, the board can clarify the law but cannot reduce or enlarge upon it. For example:

- A regulatory agency may not promulgate a rule requiring applicants for licensure to have a higher level of education than the minimum requirements stated in the enabling statutes. For example, an agency cannot require a four-year degree when the agency's enabling statutes require a high-school diploma or equivalent. Attorney General Opinion 2002-088 states, "An administrative agency cannot make a rule that institutes requirements higher than the minimum requirements stated in the **Code**."
- If an agency's enabling statutes set a maximum amount to be charged for a license, the board or commission cannot adopt rules that set the license fee above that maximum level. In other words, an agency may not promulgate rules setting the licensing fee at \$150 if the enabling statutes establish the maximum fee for licensing at \$100.

- If an agency's enabling statutes set a specific amount to be charged for a license, the agency cannot adopt rules to collect a lesser fee. An agency may not adopt a rule to prorate a license fee at less than the statutory amount, if the license will not be in effect for a full licensing period before renewal, unless statutes specifically authorize the agency to do so.
- If an agency is required by law to collect a fee, the fee cannot be waived without specific exemption authorized in the law. A license fee, active or inactive, cannot be waived for a public official or employee, or for reasons of advanced age, unless specifically authorized by law.

Attorney General Opinion 87-00222 states, "Where the legislature has established a sufficiently definite policy, standard or rule, an administrative agency may be empowered to deal with the issuing of a license or permit and to fix reasonable fees for such issuance; where the legislature has not established such a sufficiently definite policy, rule or standard, the administrative agency may not be empowered to deal with such issuing of licensing or permits or establishing of fees."

Equal Treatment for Non-resident or Non-citizen Applicants

A state agency may not require an applicant to be a resident of Alabama or a citizen of the United States, nor may the agency give applicants who are licensed in other states a different and separate examination than resident applicants. State law to that effect may be unconstitutional.

- Attorney General Opinion 83-00010 states, "...The clear language of Section 34-27-32(f) is that a person submitting an application to take the examination shall also submit evidence that he is a resident of this state. However, similar provisions or similar laws have been held unconstitutional as violative of Article 4, Section 2, and the 14th Amendment of the United States Constitution. *State v. Rose*, 122 So. 225 at 238; but see dissent, *State v. Rose*, supra, at 239."
- Attorney General Opinion 81-00450 states, "...We find, however, no provision which would permit the Board to administer a separate and different examination to licensees of other states. In a separate examination, is quite likely that such an examination would violate the Due Process and Equal Protection clauses of the United States and Alabama constitutions."

Social Security Number on Application Forms

Federal law and the ***Code of Alabama 1975*** require all applicants for the issuance or renewal of a license, certificate, or permit to provide their social security numbers to the licensing agency. The ***Code of Alabama 1975***, Section 30-3-194, states, "Any agency charged with the administration of any law concerning the issuance or renewal of a license, certificate, permit ... to engage in a profession, occupation, ... shall require all applicants for issuance or renewal of the license, certificate, permit, or other authorization to provide the applicant's Social Security number..." These requirements are mandated by the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193).

In addition, Attorney General Opinion 2004-22 opines that an agency must obtain the social security number of any individual or individuals of a corporation, partnership, or limited liability company who are responsible for providing an application for that entity.

Examinations

○ National Examination

Many licensing boards and commissions use national examinations developed by professional associations or testing services. Some boards are now opting to have the testing done by independent testing services. Unless a board's enabling statutes are worded so as to require a board to collect an examination fee, the board may require also require an applicant to pay the examination fee directly to the testing company, as discussed in Attorney General Opinion 86-088.

Renewal of License

● License Renewal, Expiration, and Grace Period

- *License cannot expire while awaiting board action* - The Administrative Procedure Act, **Code of Alabama 1975**, Section 41-22-19(b), states, "When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court."
- *Grace period must be authorized by law and does not confer the right to practice* – A 'grace period' specified in the enabling statutes may provide an amount of time that may elapse after the renewal due date during which a license can be renewed. If grace periods are not authorized by statute, a board or commission may not set them. Renewal during a grace period may include a monetary penalty which must be authorized in the enabling statutes. The grace period for renewal does not confer the right to practice after the license expiration date, only the right to renew without applying for a new license.
- *Expiration date is the date after which a license becomes invalid and the licensee becomes unlicensed* – The license expiration date is normally set by statute. If the date is not named, expiration occurs at the ending date of the period for which the license was issued. **A person with an expired license has no authority to practice the profession after the license expiration date, even though the grace period for license renewal has not expired.** See attorney general's opinion #1999-161 for discussion of this issue.
- *Reinstatement authority must be authorized by law* - A person with an expired license must either apply for a license as a new applicant or have the license reinstated. A licensing board has no authority to reinstate an expired license unless reinstatement is specifically authorized in the enabling statutes and then only under the conditions specified in the enabling statutes.

- *Continuing education not authorized unless specified in the law*

Cannot require without statutory authority - A board or commission cannot mandate continuing education for its licensees unless it is specifically authorized in the enabling statutes. If statutes authorize the establishment of mandatory continuing education, it must be done according to the terms of the statute.

Attorney General's Opinion 96-099, in response to questions asked by the Board of Cosmetology, stated, "The statutory requirements for renewal of all licenses issued by the Board of Cosmetology, including instructors' licenses, is set out in ***Code of Alabama 1975***, Section 34-7-19. This section allows renewal upon application and payment of the applicable renewal fee provided under Section 34-7-11. Neither Section 34-7-19 nor any other provision of Sections 34-7-1, *et seq.*, authorizes the imposition of a continuing education requirement for renewal.

Cannot be waived without statutory authority - If statutes mandate continuing education as a prerequisite for licensure, a board or commission is not authorized to waive the requirement, unless the law authorizes the waiver.

Criteria for acceptance must become administrative rule - A licensing/regulatory board with continuing education authority must have some means of determining what it will accept as continuing education. Policies developed to carry out this decision must be incorporated into the board's administrative rules.

Code of Professional Standards or Ethics Must be in Authorized in Enabling Statutes to be Enforced Upon Licensees

Some administrative agencies have a statutory requirement to develop, implement, and enforce a code of professional conduct including, but not limited to, regulations that establish ethical standards of practice. In such case, these codes of conduct or ethical practice must be adopted by administrative rule, in accordance with the Administrative Procedure Act. Following their adoption, these rules must be enforced equally upon all licensees. If enabling statutes are silent on this matter, then no enforceable codes of conduct or ethical standards can be adopted by rule.

Complaints

Licensing/regulatory boards are inherently tasked with insuring that licensing and professional practice is done according to the requirements of the licensing law. To carry out this task, a licensing board or commission must develop a formal mechanism for identifying and disciplining persons who fail to adhere to requirements for the practice of the licensed profession. An important part of this mechanism is a formal system for receiving, recording, and resolving complaints.

A board or commission may not be able to act on all complaints due to the limitations of its authority, but it can investigate all complaints to the extent that it determines if the complaint has merit and is within its authority to resolve.

- *Record of Complaints*

To do its job properly, a board or commission should maintain records from which it can determine the status of any complaint at any time. Effective management cannot take place without such records. To enable effective tracking, a record should be kept of each complaint received and the steps taken during its resolution. An adequate record should include ***at least*** the following:

- The date the complaint was received
- How the complaint was received (letter, telephone, e-mail, etc.)
- The name and address of the complainant
- The nature of the complaint
- Against whom the complaint is lodged (respondent)
- Actions taken
- Resolution of complaint
- Date of resolution of the complaint
- Date(s) complainant/respondent notified of complaint status

- *Communication with Complainants*

Complainants should be kept informed of the progress and final disposition of their complaints. A frequent condition reported to the Legislative Sunset Committee by the Examiners of Public Accounts is that complainants do not receive any information about their complaints after they are made.

- *Actions Against Non-Licensed Practitioners*

In Alabama, actions against non-licensed practitioners are normally reserved for the courts, not the regulatory boards. However, the regulatory boards can bring the matter to the courts. The ***Code of Alabama 1975***, Section 6-6-503 states, “The unauthorized or unlawful practice of any profession, occupation or calling by any person, firm, or corporation may be enjoined by any court of competent jurisdiction on complaint brought in the name of any public body or officer having authority conferred by statute to regulate or to license the activity engaged in by such person, firm, or corporation.” Enabling statutes normally include prohibition of unlicensed practice, with attached criminal penalties. These penalties are reserved for the courts upon a finding of guilt.

Negotiated settlement is a method that has been used by regulatory boards as an alternative to bringing action in the courts against unlicensed practitioners. The unlicensed practitioner may agree to discontinue practice and/or pay a monetary amount or such other penalty as the board or commission and the unlicensed practitioner agree upon. Should the unlicensed practitioner not agree to settlement, the regulatory board or commission can only take action through the courts.

Investigations

- Hiring Qualified Investigators or Compliance Officers

If an agency is required to employ investigators with arrest powers, they must be sworn peace officers authorized to use police powers and must meet the minimum requirements of the Peace Officers Standards and Training Commission (POST). The *Code of Alabama 1975*, Section 36-21-46, sets the minimum standards for peace officers, while Section 36-21-53 sets the continuing education requirements necessary to maintain certification. The Alabama Peace Officers Standards and Training Commission sets the education requirements for certification of law enforcement officers, which may be found in the Alabama Administrative Code, Section 650-X-4-.01. Section 650-X-8-.04 names the classifications of officers not required to satisfy these requirements.

Discipline of Licensees

- Due Process

Due process is extremely important when meting out discipline or sanctions. Agencies must ensure due process is followed. The 14th Amendment of the U.S. Constitution states, "...No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Alabama Administrative Procedure Act, found in the *Code of Alabama 1975*, Sections 41-22-1 *et seq.*, addresses administrative due process for boards and commissions in carrying out discipline against licensees.

- Using Board Members in Investigation and Hearing Process

A board or commission member may be involved in the investigation process, but to maintain the impartiality of the ruling body, the member should recuse himself from the disciplinary hearing process in any capacity other than as a witness. At a hearing, the board or commission members must act in an impartial manner. To include a member who investigated the matter being heard is to increase the risk that bias will be brought into the process. All of the investigative work could be nullified if a licensee appealed a board decision to the courts and demonstrated that a board member's decision was not impartial.

- Use of a Hearing Officer

To ensure that due process is followed, licensing/regulatory boards are increasingly using a hearing officer to hold disciplinary hearings and to provide a summary of findings of facts and conclusions of law, along with a recommendation to the board or commission, who will then vote to accept, modify, or reject the hearing officer's summary and recommendation.

Boards or commissions have contracted with private persons with legal expertise to act as hearing officers.

- *Disciplinary Actions*

- *Options*

Disciplinary actions by a board may include disciplinary actions authorized in the law or those agreed to by both the board and the disciplined person in a negotiated settlement. Should a violator not agree to a negotiated settlement, the board is limited to actions authorized in the law. Actions authorized by law may include administrative fines, and usually include limitation of practice by suspension or revocation of license. In addition, the agency can bring the matter before the courts.

- *Grounds For Action*

Disciplinary actions must be based upon the grounds for disciplinary action authorized by law. Usually, statutes provide that a board can bring disciplinary actions based upon any violations of the board's enabling statutes; however, if the statutes provide specific grounds for disciplinary action, the board cannot bring disciplinary actions based upon any other grounds.

- *Notification of Suspension or Revocation of License*

Alabama's Administrative Procedure Act in the ***Code of Alabama 1975***, Section 41-22-19(c), states, "No revocation, suspension, or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency gave notice by certified mail to the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license."

- *Negotiated Settlements and Consent Orders*

Although negotiated settlements are not an option provided in a board's enabling statutes, the state's Administrative Procedure Act in the ***Code of Alabama 1975***, Section 41-22-12(f), states, "Unless precluded by statute, informal dispositions may be made of any contested case by stipulation, agreed settlement, consent order, or default or by another method agreed upon by the parties in writing." What this means is that the board can offer a disciplinary measure to an offender in lieu of taking the specific disciplinary action authorized in the board's enabling statutes. If the offender agrees, the conditions of the settlement become binding and enforceable.

Attorney General Opinion 2001-44 states, "...the State Oil and Gas Board of Alabama may enter into informal settlement agreements with persons who violate the Alabama oil and gas laws and the Board's regulations. The use of settlement agreements to dispose of disputes is supported by the Alabama Administrative Code and encouraged by the Alabama judiciary, as well as the United States Supreme Court. In this instance, once the Attorney General approves a proposed settlement agreement, the Board may make a settlement agreement to enforce the laws and rules of the Board and to accept money to recover the investigative costs and administrative costs of the Board."

Licensure and Alabama's Child Support Law

The *Code of Alabama 1975*, Section 30-3-174, states in part:

“(a) Upon receipt of a notice from the Department of Human Resources or its agent to withhold, restrict use of, suspend, or revoke a license, a licensing authority shall implement the withholding, restricted use, suspension, or revocation of the license by doing the following:

(1) Determining that it has issued a license to the obligor whose name appears on the notice.

(2) Entering the suspension or revocation on the appropriate records.

(3) If required by law, demanding surrender of the suspended or revoked license.

(b) A notice issued by the department or its agent to withhold, restrict use of, suspend, or revoke a license shall be processed by the licensing authority without any additional review or hearing by the licensing authority. The licensing authority shall have no jurisdiction to modify, reword, reverse, vacate, or stay the decision of the department or its agent.

(c) Any decision issued by the department or its agent to withhold, restrict use of, suspend, or revoke a license continues until the department or its agent advises the licensing authority that the decision to withhold, restrict use of, suspend, or revoke has been stayed or is no longer in effect. While the department's decision is in effect, the licensing authority may not issue, reissue, or renew the obligor's license.

(d) The licensing authority is exempt from any liability to the licensee for activities conducted in compliance with this article.”

Alternative to Disciplinary Action - Impaired Professionals

An impaired professional is defined as a professional having an inability to practice with reasonable skill and safety to patients by reason of illness, inebriation, misuse of drugs, narcotics, alcohol, chemicals, or any other substance, or as a result of any mental or physical condition. Remedy of this condition through mandated intervention is an alternative to disciplinary action.

For example, the boards that license veterinarians, dentists, and pharmacists have the statutory authority to enter into an agreement with a non-profit corporation, health provider, or professional association for:

- Contracting with providers of treatment programs
- Receiving and evaluating reports of suspected impairment from any source
- Intervening in cases of verified impairment
- Referring impaired professional to treatment programs
- Monitoring the treatment and rehabilitation of impaired professionals
- Providing post-treatment monitoring and support of rehabilitated impaired professionals
- Performing such other activities as agreed upon by the respective boards

Section Ten: Personnel

Staffing and Personnel

Payroll/Personnel Records and GHRS- State agencies that have funds within the State Treasury use the Government Human Resource System (GHRS) database as its official personnel/payroll record. GHRS is an integrated payroll/personnel system for the State of Alabama, operated jointly by the State Personnel Department and the State Comptroller's Office. The State Personnel Department assigns a GHRS payroll assistant to aid state agencies in the payroll process. Many are online with the State Personnel Department and submit payroll information electronically. Employees of these agencies are paid from the State Comptroller's Office by state warrant or electronic transfer. For more information, refer to the *State Personnel Manual*, the *State Personnel Board Rules and Regulations*, and/or the *Fiscal Policies and Procedures Manual*. Payroll is only one aspect of the GHRS System. GHRS also maintains other pertinent information regarding length-of-service entitlement to various employee benefits, such as leave accrual and use, and longevity pay. The Examiners of Public Accounts consider information on the GHRS as a state agency's official records and hold the agency responsible for their completeness and accuracy.

Agencies operating from checking accounts do not process payrolls through the State Personnel Department or the State Comptroller's office for payment. Employees are paid by check according to the rules and regulations of the agency, which must ensure compliance with applicable federal and state laws regarding employment and related benefits.

Hiring of Employees Under the Merit System Law - The state's Merit System Act, which governs the hiring of employees in state service, is found in the *Code of Alabama 1975*, Title 36, Chapter 26, which also creates the State Personnel Board and the State Personnel Department to administer the state's hiring. Unless specific statutory authority is granted to hire outside of the merit system, state agencies must comply with the Merit System Act and with State Personnel Board's rules and policies, as presented in the State Personnel Department's Personnel Procedures Manual. These rules and policies include procedures necessary to remain in compliance with federal and state laws regarding hiring, promotion, non-discrimination, benefits, and termination.

In the state's merit system law, positions of service are divided into three categories:

- *Exempt Service*
These positions are exempt from the requirements of the state's merit system law and are not entitled to merit system benefits, such as annual and sick leave. They are exempt from the State Personnel Department's policies, and the rules of the State Personnel Board. Exempt positions include, among others, officers elected by the vote of the people; officers and employees of the legislature; all employees of a district attorney's office; **members of boards and commissions**, whether appointed or self-perpetuating; and **heads of departments required by law to be appointed by the governor or by boards or commissions with the approval of the governor**; the governor's private

secretary, legal advisor, recording secretary, and those employees of the governor's office paid exclusively out of the Governor's Emergency or Contingent Funds.

- Unclassified Service

These positions are subject to the same rules and regulations, and benefits as classified employees except as to appointment and dismissal. The positions include **one confidential assistant or secretary for each board, commission**, and elected officer, and, **when requested by the governor, for each department head appointed by the governor**; and all employees of the governor's office not defined as exempted employees. The positions in the unclassified service may, at the request of the appointing authority, be filled by classified employees. Each of the employees thus appointed shall, at the conclusion of his or her occupancy of such position, resume his or her previous status in the classified service.

- Classified Service

These positions include all other officers and positions. These positions are subject to all of the requirements and benefits of the merit system law, the State Personnel Department's policies, and the rules of the State Personnel Board.

- Use of Retired State Employees

In the Retired State Employee Classification -A special classification has been created in the classified service for employment of retired state employees. To continue to draw retirement benefits while employed by a state agency, a retired state employee must work in a part-time position and must not earn more than \$21,000 (2008). The amount is upgraded periodically and can be found on the Retirement System website, as shown in the contact list at the back of this manual. If either condition is breached, the employee's retirement benefits will be suspended. **It is the responsibility of the employer and the employee to notify the Retirement System if the employee earns more than the annual amount or becomes a full-time employee.** Persons hired in this classification are not eligible for longevity pay or any other benefits normally awarded to state employees in the classified service.

In their Original Classification - Retired state employees can also be re-hired in their original classifications on the Personnel Department's rehire list. However, they still must comply with the restrictions on hours worked and on wages earned put in place by the Retirement System.

Hiring Part-Time Employees in the Merit System Please note that within the merit system, it is possible to hire part-time employees. Part-time merit employees earn leave and longevity pay at a percentage rate that equals the percentage of full-time work for which they are employed. If a part-time employee works 20 hours and full-time work is 40 hours, the employee earns 50% of the leave and longevity that would be earned if the person was employed full-time. Also, if a part-time employee is regularly scheduled to work on a holiday, the part-time employee receives the holiday with pay. The employee

must be scheduled to work the day before and the day after the holiday to earn the paid holiday. The schedule of days and hours to be worked by part-time employees should be documented, with the information kept in the employee's file.

Hiring Employees Outside the Merit System Without Contract - If specific authority to hire outside the merit system is granted in an agency's law, the agency incurs additional responsibility to ensure compliance with federal and state laws concerning hiring, promotion, non-discrimination, benefits, and termination that are applicable whether or not hiring is done through the merit system. The agency can accomplish this by creating and adopting its own policies and procedures, or by adopting the State Personnel Board's policies and procedures. A strong argument can be made for state agencies granted the authority to hire outside the merit system to adopt State Personnel Board policies and rules, because the policies and rules regarding hiring, employment, and termination have been created by the State Personnel Board to ensure compliance with existing laws.

CAUTION - Since these employees are not subject to the merit system law, none of its benefits are available to the employees. Official action of the board is required to authorize benefits such as annual and sick leave. Without this action, the employees are not entitled to the benefits. The Examiners of Public Accounts reviews the conditions of employment and will expect the employee to refund the cost of paid benefits not specifically authorized by the board.

Hiring Employees Outside the Merit System With Contract - If specific authority to hire outside the merit system is granted in an agency's law, or there is no merit system position for the type of employee to be hired, a state agency can utilize an employment contract to define the conditions of employment.

CAUTION - Since these employees are not subject to the merit system law, none of its benefits are available to the employees. Care should be taken to include within the contract any benefits intended, such as annual and sick leave. Without this action, the employees are not entitled to such benefits. The Examiners of Public Accounts reviews these contracts and will expect the employee to refund the cost of paid benefits not specifically authorized in the contract.

Employment of an Executive Officer (Executive Director, Executive Secretary (etc.))

- *Classification of Executive Officer*
Unless authority to hire outside the merit system law is granted by law, the agency is obligated to hire its executive officer within the framework of the merit system law. The merit system law provides an exemption from the merit system law for executive officers of boards and commissions that are appointed by the governor, or by boards or commissions appointed with the approval of the governor. The executive officers of other regulatory boards or commissions are employed in the unclassified service of the merit system.

The *Code of Alabama 1975*, Section 36-26-10 (c)(1), states, “The unclassified service shall include: One confidential assistant or secretary for each board, commission and elected officer and, when requested by the Governor, for each department head appointed by the Governor; ...” Persons in the unclassified service can be terminated without cause, but are subject to all other benefits and restrictions that apply to regular, classified merit system employees.

CAUTION – Executive officers hired in the exempt service do not earn annual or sick leave, unless they have been previously employed in the classified or unclassified service.

Compensation Must be Approved by the Governor and the Personnel Board - The initial compensation of an executive officer must be approved by the Personnel Board. The *Code of Alabama 1975*, Section 36-6-6, states, “...provided, that where some authority other than the Governor appoints such an officer or employee, the salary shall be fixed by the appointing authority with the approval of the Governor and the state personnel board”. Therefore, when appointing an executive officer, sufficient time must be allowed to have the appointment and salary approved by the state personnel board and governor. Until that happens, the executive officer cannot be paid.

Hiring a Private Contractor - Sometimes, regulatory boards and commissions opt to contract with an independent contractor to act as executive director. In this circumstance, the terms of the contract specify compensation for the executive director, and the executive director is not considered an employee of the board. The Examiners of Public Accounts reviews these contracts to determine that the contractor is receiving no more or no less in compensation and benefits than is specified in the contract and that the contractor is furnishing all specified services.

CAUTION – Contracts with an independent contractor for the services of an executive director must be bid according to the state’s competitive bid law. Attorney General Opinion 2002-078, dated December 3, 2001, to the Honorable Jimmy Warren, opined that since the consultant provided primarily administrative and clerical skills, and that all final policy decisions must be made by the state agency, the consultant is not required to have any specific training or degree. The opinion stated that executive directors, therefore, do not fit the definition for “professionals”, as defined by the competitive bid law. Consequently, state agencies that wish to use consultants to provide administrative services cannot use the request for proposal procedures (*Code of Alabama 1975*, Section 41-16-70, *et seq.*) reserved in the law for employment of professionals, and must hire them through a formal competitive bid process (*Code of Alabama 1975*, Section 41-16-20, *et seq.*).

If your agency operates from the State Treasury, the State Purchasing Department will process formal bids for executive director services and any associated administrative services. The State Purchasing Department of the Department of

Finance will likely be the best source of information on procurement of executive director services and any associated administrative services

- *Assigning Duties to the Executive Officer*

Commonly, executive officers of licensing/regulatory boards are assigned the responsibility of hiring of personnel and managing the day-to-day operations of the agency. The board or commission monitors operations through reports from the executive officer or staff. This is a preferable course of action, since board members normally cannot devote sufficient time to maintaining day-to-day operations. However, such an arrangement requires the executive director to be well versed in state laws and regulations that apply to operation of the board and a knowledge of the profession.

Personal Service Contracts

A personal service contract may be used to procure non-professional services, where the contractor is not an employee of the board. Some examples are proctors for examinations or data entry personnel for a short-term project. For an agency that must hire through the merit system, the State Personnel Department must determine whether the job could be filled by merit system employment, either full- or part-time, and whether the rate of pay is commensurate with the qualifications of the individual and appropriate for the work to be done. Contract hiring cannot be used to circumvent the merit system, and personal service contracts are closely reviewed. Specific procedures for utilizing personal services contracts can be found in the State Personnel Department's Procedures Manual. NOTE: Personal services contracts are not exempted from the state's competitive bid laws.

Employee Issues.

While board or commission members are not expected to verify the agency's compliance with the following requirements, members are expected to hire competent personnel who will ensure and monitor compliance. Please be aware that if authority is granted to hire without regard to the merit system, the agency will need to create its own personnel policies and procedures that ensure compliance with federal and state laws that govern discrimination in hiring, promoting, compensating, and terminating employees. The state agency can vote to adopt the State Personnel Board's policies and procedures as they are organized to ensure compliance with employment requirements. All of the employment issues discussed below apply, whether or not an agency hires through the merit system. Two issues, retirement and state employee health insurance, apply to agencies that operate through the State Treasury. Some employment issues regulated by law include:

- *Discrimination in Hiring, Promoting, and Terminating*

For state agencies that are not required to use and do not choose to adopt the Personnel Board's policies, rules, and regulations, the agency must ensure that its hiring, promoting, and termination practices are non-discriminatory and comply with federal law. Federal laws, such as the *Equal Pay Act of 1963*; Title VII of the *Civil Rights Act of 1964*; the *Age Discrimination in Employment Act of 1967*; the *Rehabilitation Act of 1973*, Sections 501 and 505; and the *Americans with Disabilities*

Act of 1990, Titles I and V, all affect the hiring practices that employers use, and must be taken into account when preparing employment policies. Information web links and contact information are provided in the contact list accompanying this manual.

- *Family Medical Leave Act*

29 *United States Code* 2601, and 25 *Code of Federal Regulations* 825 – This act requires employers to provide an employee up to twelve weeks of leave, without losing his or her job, to care for a family member or to seek medical treatment.

- *Fair Labor Standards Act*

29 *United States Code* 201 – This act addresses minimum wage, child labor provisions, and the payment of overtime. It requires an employment relationship to exist between employer and employee to be in effect. Employees in the service of the state usually receive compensatory time. It is calculated the same as overtime.

Immigration Reform and Control Act of 1986

This act is codified in several sections of the US Code, so a single cite is not available. It requires employers to verify the resident status of persons hired, and to ensure they are not hiring illegal aliens. A standard Form I-9 must be completed and retained for each employee.

Selective Service Act

50 *United States Code* App 453, and *Code of Alabama 1975*, Section 36-26-15.1 – This act requires that no eligible person be enrolled in post-secondary education, hired, or promoted who has not registered with the Selective Service Administration. Eligible persons are citizen and non-citizen males between the ages of 18 and 25. The Alabama *Code* requires agencies to obtain a certification from persons employed that the person registered or that registration did not apply (in the case of males who were born from 3/29/57 through 12/31/59 and all females). Registration can be verified at the Selective Service Administration's website, www.sss.gov

New Hire Act

In response to the Federal Welfare Reform Act of 1996, the *Code of Alabama 1975*, Sections 25-11-1 through 17, require that specific information on each newly hired or recalled employee be provided to the Department of Industrial Relations within seven days from the date of hire or rehire. For the purposes of this legislation, "employee" is defined as an individual in the employ of another who performs a service for hire and receives wages. "Employer" is defined as a person or agency, including a state or local government agency or labor organization, which employs an individual to perform a service for hire and pays wages directly to the individual.

State Holidays

Official state holidays are enumerated in the *Code of Alabama 1975*, Section 1-3-8. The holidays apply to all state employees and all state offices, unless otherwise provided by law. The section requires the holidays to be observed by closing all state offices. This law is not part of the merit system law and applies whether or not the

state agency is authorized to hire without regard to the merit system. If personnel work on an official holiday, the law requires that they are to be provided a day of compensatory time in lieu of the holiday.

Payroll Withholding Taxes

Employers must comply with federal and state laws regarding Social Security, Medicare, Unemployment Compensation, and Income Tax laws. If an agency operates outside the State Treasury, it will be responsible for computing and submitting the employee and employer portions of payroll withholding taxes. The Internal Revenue Service provides guidance for taxes that must be withheld in its Circular E. In addition, the agency will be responsible for preparing forms W-2 or 1099 MISC at year-end. Form W-2 is prepared for employees, while form 1099 MISC is prepared for independent contractors. If a contractor submits a social security number for tax identification purposes, the contractor receives a W-2. Corporations typically do not receive a 1099 MISC, unless they provided medical or legal services. Timely submission of employees' income tax withholdings according to the IRS schedule is required.

Military Leave

38 *United States Code*, Chapter 43, is the Uniformed Services Employment and Reemployment Rights Act. 38 *United States Code* 4311 states in pertinent part, "A person who is a member of, applies to be a member of, performs, has performed, applies to perform or has an obligation to perform service in a uniformed service shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that membership, application for membership, performance of service, application for service or obligation." The *Code of Alabama 1975*, Section 31-12-13, guarantees employees up to 168 hours per calendar year of paid leave for qualifying federal military service and an additional 168 hours per calendar year for active duty called by the governor in service of the state. The section entitles employees to military leaves of absence from civil duties and occupations on all days engaged in field or coast defense or other training or service ordered under the National Defense Act, or federal laws governing the United States reserves, without loss of pay, time, efficiency rating, annual vacation, or sick leave. The *Code of Alabama 1975*, Section 36-26-31, states, "Upon the application in writing of any such person, which application shall be directed to and filed with the state director of personnel, the state personnel board shall enter upon its minutes an order or memorandum granting to such applicant an indefinite leave of absence for such length of time as such applicant shall honorably serve in any of the armed forces of the United States." Therefore, if an employee is on continuous active duty status for more than 168 hours, on January 1 of each year, the employee is entitled to an additional 168 hours of military leave. The employee does not have to return to the job to be entitled to the leave. While caps have been placed on pay for leave at 168 hours, it does not cap the benefits that can be provided to an employee while on active duty. Benefits that do not require the employee to be in a pay status, such as insurance and longevity pay, are not waived while the employee is on active duty. State agencies may not enact personnel policies

which conflict with the law in amount of pay provided, number of hours of leave provided, or any other matter. Attorney General Opinion 2003-070 addresses the carry-over of more than 480 hours per calendar year of annual leave earned by returning military personnel. The State Personnel Department has provided guidelines for the carry-over and use of restored annual leave for military personnel. Attorney General Opinion 2004-29 opines that the use of sick leave while on military leave is prohibited by the rules of the State Personnel Board.

- Attorney General Opinions 2006-135, 2002-090, 96-207, 96-188, and 84-289 clarify and interpret the items discussed above.
- Additional information on the impact of the federal law can be obtained from the Employer Support of the Guard and Reserve (ESGR), an agency within the office of the Assistant Secretary of Defense for Reserve Affairs, at 1-800-336-4590, or on line at www.esgr.org.

Longevity Pay

The ***Code of Alabama 1975***, Sections 36-6-11, 36-6-12, and 36-21-3, govern longevity pay for state employees. Please note that 36-6-11(a) states:

“Each person employed by the State of Alabama, and all legislative personnel, officers or employees, including but not limited to Legislative Reference Service personnel, whether subject to the state Merit System or not, shall be entitled to and receive in a lump sum the first pay day of December each year...”.

The pay amount begins at \$300 and increases by \$100 at the end of each subsequent five-year period of service, to a maximum of \$700. Additionally, employees of the state are authorized to receive additional amounts of longevity pay in the years that they do not receive a cost-of-living adjustment, up to a total of \$300 above their appropriate longevity step, based on their years of service with the state. Once a cost-of-living adjustment is given, however, the longevity pay amounts go back to their original base amounts.

Who can receive it? The longevity pay statutes apply to any permanent full-time or permanent part-time person employed by the state of Alabama, including hourly workers. Longevity pay eligibility is not limited to merit system employees. The comptroller’s office, through the *Fiscal Policies and Procedures Manual*, states that longevity pay does not apply to independent contractors. Attorney General Opinions 88-061, 88-062, 88-066, 88-067, 88-198, 88-241, 88-271, 90-111, 92-083, and 92-195 discuss various issues surrounding longevity pay.

Provision for Retirement

Employees Paid by State Warrant – Membership in the Employees Retirement System is mandatory for state employees paid by state warrant. The ***Code of Alabama 1975***, Sections 36-27-1 through 36-27-161, establishes the State Employees Retirement System and makes membership a mandatory condition of employment for

most state employees. Sections 36-27-1(2) and (3) define “employee” as one in state service **who is paid by state warrant**, and define “employer” as the state of Alabama or any department, commission, institution, or any other agency of and within the state by which an employee is paid.

Employees Not Paid by State Warrant –Employees of agencies that operate through checking accounts cannot be members of the State Employees Retirement System, unless specifically authorized in their enabling statutes. However, such agencies may contact the Retirement Systems of Alabama to set up a retirement plan for its employees in a separate account. Otherwise, the agency can provide retirement plans for its employees in the same manner as private employers.

Guns and Badges - The **Code of Alabama 1975**, Section 36-21-8, provides that certain law enforcement officers shall receive, without cost, his or her badge and pistol as part of his or her retirement benefit. Agencies include the Department of Conservation and Natural Resources, Alcoholic Beverage Control Board, Forestry Commission, Alabama Criminal Justice Information Center, Department of Public Safety, Capitol Police, and **other agencies employing officers who are required to be Peace Officers Standards and Training Commission-certified.**

State Employees Health Insurance – *Only for full-time employees paid by state warrant* - The **Code of Alabama 1975**, Sections 36-29-1 through 36-29-30, establishes the State Employees’ Health Insurance Plan. Section 36-29-1(3) defines “employee” as “a person who works full time for the State of Alabama or for a county health department and who receives his full compensation on a monthly basis through means of a state warrant drawn upon the State Treasury...and any person employed part time by the State of Alabama on a wage and hourly basis, excluding fee compensations and other like arrangements, shall be included in the definition of employee as defined in this chapter provided such person shall agree to have deducted from his or her hourly wage, as stipulated, a pro rata portion of the premium cost of a full time employee based on the percentage of time such person is employed by the state according to rules and regulations established by the State Employees’ Insurance Board.” Due to this definition, employees of state agencies that operate from a checking account cannot participate in the state employees’ insurance plan, unless otherwise specifically authorized by law.

Nepotism Law (for employees hired outside the merit system)

The *Code of Alabama 1975*, Section 41-1-5, requires that no person with hiring authority may hire any person within four degrees of affinity (marriage) or consanguinity (genetic kinship). The chart below shows the four degrees:

Table of Consanguinity and Affinity			
Within 4 Degrees Of Relationship			Great Grandparents (3 degrees)
		Grand Parents (2 degrees)	Great Uncles & Aunts (4 degrees)
	Parents (1 degree)	Uncles & Aunts (3 degrees)	
Office Holder	Brothers & Sisters (2 degrees)	First Cousins (4 degrees)	
Children (1 degree)	Nephews & Nieces (3 degrees)		
Grand Children (two degrees)	Grand Nephews & Nieces (4 degrees)		
Great Grand Children (3 degrees)			

Controversy in the Workplace

Controversy that could open a state agency to litigation, such as sexual harassment, intolerance, and violence in the workplace, is becoming more commonplace. While there are no federal or state laws or regulations requiring a state agency to provide training on sexual harassment, intolerance, or violence, sound personnel practices include providing employees with training on recognizing, reporting, and controlling sexual harassment, intolerance, and violence in the workplace. The State Personnel Department has developed training classes to help employers and employees understand the laws that govern non-discrimination and safe work environments, and to recognize and deal with controversial work environment issues. Information, Internet links, and contact numbers are provided in the contact list accompanying this manual.

Terminating Employees

Unclassified employees in the merit system, including the executive officer, serve at the pleasure of the appointing authority and can be dismissed by that authority without cause. Classified, merit system employees must be suspended or dismissed in accordance with rules promulgated by the State Personnel Board. Contract employees are terminated according to the terms of the contract. Non-contract employees who are

not merit system employees may be terminated by the appointing authority according to conditions of employment set by the appointing authority. Federal laws that govern discrimination in hiring also govern discrimination in termination. State agencies hiring outside the merit system should review terminations and termination policies to determine whether they are in compliance with federal law.

Acquiring Legal Counsel/Representation

The *Code of Alabama 1975*, Section 36-15-1, states, "...no attorney shall represent the State of Alabama, or any agency, department, or instrumentality of the state in any litigation in any court or tribunal unless the attorney has been appointed as a deputy attorney general or assistant attorney general."

- *Attorney General's Office*

The attorney general (AG) is the legal counsel for the state. Among other duties, all litigation concerning the state, or any agency of the state, is under the direction and control of the attorney general. He also gives his opinion, in writing, on any question of law connected with the interests of the state or with the duties of the agencies. Most state agencies have a representative of the AG's office assigned to them to provide legal counsel. In some instances, there is an agreement by which the agency pays for the services of the AG's attorney. If your agency is involved in litigation, an attorney other than the one assigned to assist you with routine legal matters can be appointed by the attorney general with the approval of the governor for your particular litigation (*Code of Alabama 1975*, Section 36-15-21).

- *Private Attorneys Hired by Contract*

When necessary, additional legal counsel may be obtained. An attorney's services fall under the definition of "professional services" in the competitive bid law and are, therefore, exempt from the competitive bid law requirements. **Private attorneys are hired under professional services contracts that must meet the 'competitive selection requirements for attorneys provided in the *Code of Alabama 1975*, Section 41-16-21.** Private attorneys retained to represent the state in litigation must be appointed as Deputy Assistant Attorney General (DAAG) by the attorney general in consultation with the governor from a list of attorneys maintained by the attorney general. Fees are negotiated between the agency and the attorney and are approved by the governor in consultation with the attorney general. Fees in excess of \$85/hr must be approved by the governor. **All legal services contracts must be submitted to the Contract Review Permanent Legislative Oversight Committee, as required by the *Code of Alabama 1975*, Section 29-2-41.2. No agency is exempted from this provision.**

Section Eleven: Appropriations and Budgets (Agencies that Operate through the State Treasury)

Agencies that operate through the State Treasury deposit and spend money through a separate account known as a fund. A fund is similar to a checking account, in that money is deposited into and expended from the account, and the account has a separate set of records. All expenditures of agencies that operate through the State Treasury must be budgeted and authorized by the legislature through an appropriation, or the treasury and the comptroller will not disburse funds.

Appropriation Authority

Money cannot be spent from the state treasury without an appropriation from the legislature, no matter what its original source. An appropriation is loosely defined as permission to spend or obligate money. This requirement applies equally to money collected as fees by state licensing boards and money in the state's General Fund. State agencies may not spend more than the amount appropriated by the legislature.

- Requires Legislative Action

The *Alabama Constitution of 1901*, Article IV Section 72, states, "no money shall be paid out of the treasury except upon appropriations made by law, and on warrant (state check) drawn by the proper officer in pursuance thereof; ... The funds are required to be appropriated by the legislature of which power cannot be transferred or delegated."

- Budget Requirement

Each year, state agencies request authority to spend a certain amount of money (an appropriation), the aggregation of which becomes the budget submitted by the governor to the legislature. The annual appropriation request is initiated by submitting information to the Executive Budget Office (EBO).

Normally, a licensing board's appropriation is based on its projected receipts and any balance of funds available from previous years. If an agency does not have sufficient cash to finance its operations, money may possibly be obtained from the Governor's Departmental Emergency Fund, which may require repayment. A licensing/regulatory board may also receive a supplemental appropriation from the state's General Fund by legislative act, if the legislature can be convinced to do so.

- Retention of Year-End Balances

Optimally, receipts for a licensing/regulatory board should meet operational needs, including a reserve for unexpected costs. Some money must be retained at the end of the fiscal year to fund the first quarter of the next year's operations and to meet contingencies such as contract obligations, travel expenses, utilities, etc. Some boards retain all unspent balances in their funds. Some are required by law to transfer all or part of their remaining fund balances at year-end to the state's General Fund or to another fund, as stated by law. This transfer is not optional and should be made shortly after obligations of prior year appropriated funds have been paid. The

Examiners of Public Accounts routinely check to see that this has been done accurately and in a timely manner.

Budgeting

- *Budget Management Act*

Formulation of the budget begins with the preparation of estimates of expenditures for the next fiscal year by the administrative head of each budgeted agency. These estimates are submitted annually to the Executive Budget Office on or before each regular session of the legislature. Annually, the EBO provides to the agencies a set of instructions and forms for preparing a budget request.

Section Twelve: Cash, Investments, Receipts

Petty Cash

A petty cash fund is cash on hand to pay incidental expenses. Petty cash funds are not allowed unless specific authority is granted to the agency. Petty cash should be reconciled on a regular basis by someone other than the custodian. All expenditures should be supported by documents, such as receipts. **The balance of cash plus documented disbursements should always equal the amount authorized.**

Limitation on Investments

Only boards/commissions specifically authorized to invest their funds may do so. The *Constitution of Alabama 1901*, Amendment No. 450, states that agencies may invest their funds in the following:

- Interest-bearing demand deposits in federally insured banks, and interest-bearing deposits, whether or not evidenced by certificates of deposit, in federally insured banks
- Bonds, notes, and other evidences of indebtedness that are direct obligations of the United States of America or that are unconditionally guaranteed as to both principal and interest by the United States of America
- Bonds, debentures, notes, or other evidences of indebtedness issued or guaranteed by any federal agencies or government-sponsored enterprises authorized to issue their own debt instruments
- Repurchase agreements with federally-insured banks or with government bond dealers reporting to and trading with the Federal Reserve Bank of New York
- Interest-bearing time deposits (whether or not evidenced by certificates of deposit) in savings and loan associations, following certain restrictions
- Corporate securities, following certain restrictions.

Security for Alabama Funds Enhancement Program (SAFE)

Funds deposited and held in accounts outside of the State Treasury must be sufficiently protected, or collateralized, with securities provided by the depository. For each depository, if it is a member of the Federal Deposit Insurance Corporation (FDIC), the total of accounts of each ownership category for each depositor will be insured up to \$100,000. All funds in the accounts over the \$100,000 in each ownership category must be protected with collateralized securities pledged by the depository. THE AMOUNT HAS BEEN TEMPORARILY INCREASED FOR 2009 TO \$250,000 DUE TO THE NATIONAL FINANCIAL CRISIS. A discussion of the FDIC and its deposit insurance can be found on the Internet at www.fdic.gov. Prior to January 1, 2001, each state agency was responsible for ensuring that its funds were fully protected, either with FDIC coverage or collateralized securities. With the passage of the SAFE Act, this responsibility has been entrusted to the Board of Directors of the SAFE program. The *Code of Alabama 1975*, Section 41-14A-3(2), requires all public depositors to place their public deposits with one or more qualified public depositories. If your agency operates outside the state treasury, you can access

the treasurer's website at www.treasury.state.al.us to determine if your agency's bank is a qualified public depository.

CAUTION – STATE AGENCIES THAT DO NOT OPERATE THROUGH THE STATE TREASURY - All state agencies that do not operate from the State Treasury must deposit their funds into a qualified public depository. The Examiners of Public Accounts will ask for documentation of agency compliance with the SAFE program. This request can be met by having a Public Deposit Identification and Acknowledgement Form in your files. The form should be signed by the bank and department representatives and should contain the bank balance in the upper right hand corner of the form. Your bank statement should exhibit wording such as "Public Funds" or "SAFE Deposit" or "Government Funds". We have encountered several instances where the wording "not for profit" was used. This may or may not mean compliance with the SAFE program. When in doubt, verify with the bank in writing. If the Public Deposit Identification and Acknowledgement Form is properly signed and on file, the wording, or lack of wording, on the bank statement is not important. The most important point is that the bank should be aware that the accounts in question are public funds and that they must be covered under the SAFE program.

State Funds Defined

All amounts collected by licensing/regulatory boards are state funds. Attorney General Opinion 2002-349, dated 9/26/2002, states that any funds collected by the Board of Auctioneers under the authority and direction of the state are state funds.

Deposit of Funds in State Treasury

Absent specific authority to operate from a checking account, all fees, receipts, and income collected or received by any state department or agency must be deposited into the State Treasury or an approved state depository to the credit of a special fund as required by law. The State Comptroller's Office, Division of Control and Accounts, is charged with controlling and recording all payments into and out of the State Treasury.

Information About Fees

○ *Bad Check Fee*

The ***Code of Alabama 1975***, Section 8-8-15, allows agencies to assess a fee for checks returned for non-payment due to insufficient funds, etc. The maximum bad check charge is \$30. **An agency is not allowed to collect more than \$30.**

There are procedures an agency must follow to collect bad checks. Section 13A-9-13.1 gives a ten-day period of written notice for the maker of a bad check to make payment to the holder of the bad check, along with a service charge. If the notice of the bad check is mailed by certified or registered mail and returned undeliverable, it is evidence that the maker of the check intended to not honor the check. This section also states that, "negotiating a worthless negotiable instrument is a Class A misdemeanor." Section 13A-9-13.2 gives the form of the notice to be sent to the

maker of a bad check. After an agency has followed the procedures in Section 13A-9-13.1, a complaint to the Worthless Check Unit of the District Attorney's Office may be presented.

- *Payment of Required Fee is Required to be Qualified for Licensure*
Payment of fees is part of the qualification to be licensed. If the fee is not received, the payer is not qualified to be licensed. Also, an agency cannot receive partial payment, as it is not constitutional for an agency to extend credit.
- *Payment of Fees by Credit Card is Authorized for all State Agencies*
Below is a brief statement covering the acceptance of credit cards for payment of fees by agencies. The acceptance of credit cards allows persons to apply for an original license and for licensees to renew via the Internet.

For further information on credit card receipts, refer to the *Code of Alabama 1975*, Section 41-1-60 - Acceptance of credit card payments. **Please note that this section allows the agency to determine whether the payer or the agency will pay the credit card transaction fee.**

“...Any officer or unit of state government required or authorized to receive or collect any payments to state government may accept a credit card payment of the amount that is due. This section shall only apply to departments, agencies, boards, bureaus, commissions, and authorities which are units of state government, and shall not apply to any departments, agencies, boards, bureaus, commissions, or authorities which are units of county or municipal government and come under the provisions of Chapter 103 of Title 11.”

If your agency decides to accept credit cards, then your agency must adopt reasonable policies, rules, or regulations that are not in conflict with the law governing the acceptance of credit card payments. **The state has a contract with a third party, Alabama Interactive, to process transactions between the state and its citizens over the Internet**, including credit card processing, application development, integration with the agency's existing systems, security, application hosting, application support, and management reporting. If your agency wishes to begin accepting credit cards in payment for fees by Internet, it should contact Alabama Interactive. See the contact list included in this manual for appropriate contact information.

- *Type and Amount of Fees Stated in the Agency's Enabling Statutes*
In this condition, the enabling statutes name the fees that can be charged and the amount of the fees. Sometimes the fees are discretionary within a range, such as “not to exceed \$500.” At other times specific amounts are named. When fees are set by law, they cannot be changed by a board, except within the range specified, without a change to the enabling statutes. The prohibition against change applies not only to the amount, but also to the type of fee. If the law names only an application fee, a

board cannot charge an additional license issuance fee. Legislation would have to be introduced and passed to effect such a change. Examples of mandated fees include:

- “...the Board of Social Work Examiners shall receive applications from individuals, such applications being duly notarized and sworn, which outline the applicant's eligibility for licensure under the criteria specified in either subdivision (1), (2) or (3) of this section, accompanied by an initial application fee of \$50.00 in the form of a certified check made payable to the Alabama State Board of Social Work Examiners...” (*Code of Alabama 1975*, Section 34-30-23 [Board of Social Work Examiners])
- The fees prescribed by this chapter shall be in the following amounts:
 - (1) The fee for application to the board is seventy-five dollars (\$75).
 - (2) The fee for examination or reexamination shall be in an amount as established by the board in order to cover all costs of examination, but in no event shall the fee exceed the actual cost of preparing and administering the examination.
 - (3) The fee for an original certificate is fifty dollars (\$50).
 - (4) The fee for a duplicate certificate is fifty dollars (\$50).
 - (5) The annual license fee is one hundred fifty dollars (\$150) for residents of Alabama and for nonresidents.
 - (6) The penalty fee is fifty dollars (\$50), as provided in Section 34-17-24.
(*Code of Alabama 1975*, Section 34-17-25 [Board of Examiners of Landscape Architects])
- *Amount received in Excess of Fees is Always Refundable*

If the enabling statutes of a state agency specify that fees will not be refunded to an applicant, then the agency is not allowed to return the fees. However, should an amount in excess of the correct fee be received, the difference must be refunded, as the agency has no authority to collect more than the correct amount.

“The sum or fee of three hundred dollars (\$300) accompanying original applications and sum or fee of two hundred dollars (\$200) accompanying applications for renewals under this section are for the administration and enforcement of this chapter and shall not be refunded to the applicant.” (*Code of Alabama 1975*, Section 34-8-2 [Licensing Board for General Contractors])
- *Fees for Providing Copies of Records*

State records laws require state agencies to provide public access to its records and to provide a copy to anyone who requests it. The cost of providing the copy can be charged, but not the cost of providing the record. If a roster of licensees is routinely maintained, the agency is allowed to recover the cost of providing a copy to members of the public, but not the cost of maintaining the roster. Cost recovery must be based on reasonable estimates of the amount it actually cost to provide the copy, and may not be used as a revenue-generating mechanism. **Boards cannot consider how the roster information will be used when setting the fee.**

- *Fee vs. Fees*

If the language in the law specifies that the board may charge a fee [singular], the board is only given the authority to set one amount that must be charged in all circumstances. If the language in the law specifies that board may charge fees [plural], then it may charge different amounts, depending on circumstances. This issue is discussed in Attorney General Opinion 2002-302.

Section Thirteen: Contracts

Governor's Approval of Contracts

All contracts for personal or professional services with private entities or with individuals must be approved in writing by the governor. See Governor Folsom's Executive Order, August 28, 1957 and Attorney General Opinion, June 9, 1948, to McFarland for more information.

Bid Requirements

The **Code of Alabama 1975**, Section 41-16-20 provides that, "With the exception of contracts for public works whose competitive bidding requirements are governed exclusively by Title 39, all contracts of whatever nature for labor, services, work, or for the purchase or lease of materials, equipment, supplies, or other personal property, involving seven thousand five hundred dollars (\$7,500) or more, made by or on behalf of any state department, board, bureau, commission, committee, institution, corporation, authority, or office shall, except as otherwise provided in this article, be let by free and open competitive bidding, on sealed bids, to the lowest responsible bidder."

All purchases of \$7,500 not exempted from the bid law are required to be by competitive sealed bid. **Note - Requests for Proposals (RFP's) are not bids.**

For some goods and services, the State Purchasing Division of the Department of Finance accepts bids in advance, resulting in contracts with the state through which state agencies can purchase goods or services at a predetermined price. Listings of goods or services under contract are available at the State Purchasing Division. For agencies that operate through the State Treasury, the State Purchasing Division will process bids for goods or services not on contract. **Agencies that operate from checking accounts must process bids on their own in accordance with the bid law.** An Attorney General Opinion dated March 14, 1978, states that, "Competitive bids must be taken in spite of past purchases from a particular vendor."

Exemptions to Bid Requirements – See **Code of Alabama 1975**, Sections 41-16-21, 41-16-23 and 41-16-75

RFP Process Required for Procurement of Professional Services

Act 2001-956 modified the unconditional 'professional services' exemption in the **Code of Alabama 1975**, Section 41-16-21 by creating a competitive selection (RFP) process for procurement of professional services in Sections 41-16-70 through 41-16-79. Some relevant points of this process are:

Attorneys

- Attorneys retained to represent the state in litigation must be appointed by the attorney general in consultation with the governor from a listing of attorneys maintained by the attorney general. Fees must be negotiated between the agency and the attorney and approved by the governor in consultation with the attorney general.
- Attorneys retained for non-litigation services must be selected from a listing of attorneys maintained by the legal advisor to the governor. Fees must be negotiated by the entity

purchasing the services of the attorney and are subject to the review and approval of the governor or the director of finance, if so designated by the governor.

Physicians

- Physicians retained to provide medical services must be selected from a list of physicians maintained by the Medical Licensure Commission.

Other Professionals

Notice - Notice of the need for these professional services must be widely distributed to the professional community in a full and open manner. The director of finance, through the Division of Purchasing, has established lists of professional service providers from which to select. The state agency can add to the lists. Proposals must be solicited from the providers who have made known their desire to receive requests for proposals. The lists are provided to the agency upon request by the Division of Purchasing.

Personal Services Contracts (employee/employer relationship exists)

A personal service contract is used to procure non-professional services, where the contractor is not a regular state employee. Some examples are proctors for examinations or data entry personnel for a short-term project. For an agency that must hire through the merit system, the State Personnel Department must determine whether the job could be filled by merit system employment, either full- or part-time, and whether the rate of pay is commensurate with the qualifications of the individual and appropriate for the work to be done. Contract hiring cannot be used to circumvent the merit system, and personal service contracts are closely reviewed. Specific procedures for utilizing personal services contracts can be found in the State Personnel Department's Procedures Manual and Section 5-4 of the Department of Finance Fiscal Policy and Procedures Manual.

Professional Service Contracts (independent contractor)

The services of a professional, where specific training and/or unique talent are required to perform the work, are obtained through a professional service contract. For example, architects, actuaries, and calligraphers are professionals whose services might be contracted. In a professional service contract, an independent contractor relationship should exist. The state agency is responsible to define, through the terms of the contract, what is to be delivered and how, and the compensation.

Professional services contracts are exempt from the requirement to competitively bid, but in 2001, state law was modified to require a different competitive selection process for professional service contracts. This law provides specific procedures that must be followed to procure professional services under contract. (See *Code of Alabama 1975* – Section 41-16-21(a)[exemption from requirement for sealed bids] and Sections 41-16-70 through 41-16-79 [required competitive selection process]).

To procure professional services, an agency must first obtain a list of interested parties. The law names sources for the lists:

- Attorneys for litigation, contact the Attorney General's Office
- Non-litigation attorneys, contact the Governor's Legal Advisor
- Physicians, contact the Medical Licensure Commission
- For all other professions, the state agency is responsible for advertising the contract to interested parties and for soliciting requests for proposal. The State Purchasing Department maintains a list of professionals who wish to be contacted. Additional professionals may be added by the agency.

Format for Personal and Professional Services Contracts

A contract for personal or professional services should include, at a minimum:

- A statement identifying the parties to contract
- The scope of work to be performed, including a complete description of the work to be performed, the qualifications of the person being contracted with, and that person's social security number
- The period of agreement, which must begin after Personnel Board approval (if required) and review by the Contract Review Permanent Legislative Oversight Committee, if applicable (*the personnel director/board cannot approve retroactive contracts and neither can the legislative Committee*)
- The compensation for the services performed, including a statement of the dollar amount that compensation will not exceed
- The expenses to be paid, including a dollar limit that expenses will not exceed
- The total amount of the contract
- A termination clause with a specified number of days
- A statement of merit system exclusion so the contractor understands he or she is not eligible for merit system benefits
- The following required language: "It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment Number 26. It is further agreed that if any provision of this contract shall contravene any statute or Constitutional provision or amendment, either now in effect or which may, during the course of this contract, be enacted, then that conflicting provision in the contract shall be deemed null and void. The contractor's sole remedy for the settlement of any and all disputes arising under the terms of this agreement shall be limited to the filing of a claim with the Board of Adjustment for the State of Alabama. In the event of the proration of the fund from which payment under this contract is to be made, the contract will be subject to termination."

Further details concerning components of a contract are discussed in the Department of Finance *Fiscal Policies and Procedures Manual* and the State Personnel Department's *Procedures Manual*.

CAUTION - Payments under a contract should be monitored closely to ensure that payments occur exactly as specified in the contract. Without a monitoring system, a greater

risk exists that the contract will be overpaid. The Examiners of Public Accounts will review these contracts to determine that payments have been made as specified in the contract.

Review by the Legislative Contract Review Permanent Legislative Oversight Committee

By law, all **personal and professional services** contracts must be reviewed by this committee, unless they fall under an exception in the law. Contracts that are required to be reviewed but are not submitted for review are not valid. This has been tested in the Alabama Supreme Court, which ruled that a governor's contract with attorneys was not valid because it had not been reviewed by the committee *STATE V. AMERICAN TOBACCO CO.* 772 So.2d 417 (Ala. 2000). The committee must review all contracts for personal and professional services within a reasonable time, not to exceed 45 days after the contract has been submitted by the department (*Code of Alabama 1975*, Section 29-2-41, as amended)

There are some exemptions from review by the committee, of which the most notable is that, with the exception of legal services contracts, contracts not paid by state warrant are exempted. See the *Code of Alabama 1975*, Sections 29-2-40 through 29-2-41.3 for other exemptions.

Professional services contracts must be reviewed by the committee before the effective date of the contract and will not be accepted by the committee for services already performed.

The committee will not accept a contract for review if the effective date is not during the month it is to be reviewed or the month before.

The contracts must be for not more than two years.

The contracts must not include automatic renewal language

The committee meets once a month in the State House, normally on the first Wednesday afternoon and the first Thursday morning of the month. The meetings are posted in the State House. **Note – the committee will hold back a contract, if a representative of the agency submitting the contract is not present at the Thursday meeting to answer questions about the contract.** The committee will not accept a contract for review, if the contract is not submitted before the cutoff date, which is 10 days before the scheduled Thursday meeting. If the deadline cannot be met, the contract should be brought to the attention of the chairman of the committee for approval. This is normally done on the Wednesday before the committee's Thursday meeting.

Sole Source Provider

Services provided by a sole source do not require a bid or a request for proposals, as only one vendor provides these services. However, if the agency operates through the State Treasury, the contract must be approved by the Director of the State Purchasing Department.

NOTE – The Examiners of Public Accounts may inquire how it was determined that the contractor was a sole source provider.

Emergency Contracts

See *Code of Alabama 1975*, Section 41-16-23, Section 41-16-72(6), and Section 29-2-41.1]

With Respect to Bid Requirements - In an emergency, contracts may be let without soliciting bids. Section 41-16-23 states that, “In case of emergency affecting public health, safety or convenience, so declared in writing by the head of the institution or state agency involved, setting forth the nature of the danger to public health, safety or convenience involved in delay, contracts may be let to the extent necessary to meet the emergency without public advertisement. Such action and the reasons therefor shall immediately be made public by the awarding authority. Section 41-16-72(6) states that, “Should an emergency affecting the public health, safety, convenience, or the economic welfare of the State of Alabama so declared in writing under oath to the Governor and the Attorney General by the state entity requiring the professional services arise, the professional services required to alleviate the emergency situation may be procured from any qualified professional service provider without following the process or procedure required by this article.

With respect to review of emergency contracts by the Contract Review Permanent Legislative Oversight Committee - Section 29-2-41.1 states that, “In case of an emergency adversely affecting public health, safety, security, or the **economic welfare of the state**, so declared in writing to the Governor by the head of the institution or agency involved, setting forth the nature of the danger to public health, safety, security or the economic welfare of the state, contracts may be let to the extent necessary to meet the emergency without review by the committee.” However, there is a time limit on this exemption for one type of emergency contract. Section 29-2-41.1 further states that, “Any contract let pursuant to this section involving an emergency **adversely affecting the economic welfare of the state shall be let for a period of not more than 60 days during which time the committee shall review a contract for a longer period of time if such services are required beyond the 60-day limit hereby imposed.**” Attorney General opinion 2004-128 addresses the limits of this exemption.

NOTE - Be aware that the Department of Finance thoroughly reviews the justification for emergency contracts. Declaring a state of emergency so that an agency may hire an employee to take the place of one who has retired is not allowed.

Relationship Disclosure Requirements

Act 2001-955, now incorporated into state law as the *Code of Alabama 1975*, Sections 41-16-80 through 41-16-88, requires a disclosure statement from the vendor revealing any family relationship of the vendor to public officials or employees or their family members. The disclosure statement is to be completed and filed for all proposals, bids, contracts, or grant proposals to the state of Alabama in excess of \$5,000. The

disclosure statement is not required for contracts for gas, water, and electric services where no competition exists, or where law or ordinance fixes rates.

A copy of the disclosure statement must be filed with the awarding agency, with the Department of Examiners of Public Accounts, and with the Contract Review Permanent Legislative Oversight Committee if the contract is required to be submitted to the committee. The disclosure form can be found on the Examiners of Public Accounts Internet website under *Forms/Publications*.

There is an exemption from this act for agencies that do not receive state funds. However, the attorney general has rendered his Opinion 2002-178 to the Alabama Port authority that all funds received by a state agency are state funds.

Note: It is the responsibility of the agency to notify the vendor of the need to file and to provide the disclosure form, but it is the responsibility of the vendor to file. The disclosure statement should identify the specific contract, proposal, bid, or grant proposal to which the statement is related.

Time Limit on Contract Period

Contracts for the purchase of personal property or contractual services shall be let for periods not greater than five years (Code of Alabama 1975, Section 41-16-27(d), as amended). NOTE: This restriction only applies only to contracts that must be bid. Contracts made with two-year or four-year colleges and universities may be let for periods not to exceed ten years.

The Contract Review Permanent Legislative Oversight Committee requires that personal and professional services contracts must be limited to a two-year period.

Section Fourteen: Disbursements

Where Records are Kept

For agencies that operate through the State Treasury, disbursements are processed through the State Comptroller's Office, which maintains centralized accounting records for the state. When the Comptroller's Office receives request for payment from an agency, the attached supporting documentation is audited for accuracy, completeness and compliance with state law and rules of the Department of Finance. The State Comptroller must also determine that both sufficient funds and appropriation authority exist in order to pay a vendor. The Department of Finance publishes its regulations concerning disbursements in the Fiscal Policies and Procedures Manual, which can be reviewed and downloaded from the comptroller's website at www.comptroller.alabama.gov. The Comptroller's Office also publishes notifications of changes to the manual and other relevant data as memoranda on the website.

For agencies that operate from checking accounts, disbursements are processed at their offices according to their own procedures. These agencies are exempt from the rules of the Finance Department, which are embodied in the Department of Finance's Fiscal Policies and Procedures Manual; however, many of these rules are based on state and federal law that apply to all state agencies. Agencies that operate from checking accounts are responsible for setting up procedures to ensure compliance with these laws and for creating their own accounting records. When appropriate, it is advisable for an agency that operates from a checking account to adopt the procedures and requirements published in the manual and to review the memoranda on the comptroller's website.

Purchasing

The Division of Purchasing in the Department of Finance is, by law, responsible for the purchase of all personal property, except alcoholic beverages, for state departments, boards, bureaus, commissions, agencies, offices, and institutions. **The Division of Purchasing is not involved in purchasing by agencies that operate from checking accounts.**

Purchases made on the behalf of state agencies by the Division of State Purchasing are categorized into two categories: those requiring a purchase order and those that do not require a purchase order.

Payment for Goods and Services Purchased Without a Purchase Order (Agencies That Operate Through the State Treasury)

- Purchases up to, and including, \$500 – The State Purchasing Division has delegated its authority to individual state agencies to purchase goods and services of an emergency or non-recurring nature up to and including \$500.
- Purchases from \$500.01 up to, and including, \$7,499.99 – Prior approval must be obtained from the State Purchasing Division to purchase goods or services from \$500.01 to \$7,499.99. The agency must contact the State Purchasing Division

buyer responsible for purchases of the goods. The buyer can provide approval as a telephone authorization in an emergency.

- Purchases in excess of \$7,499.99 – These purchases must comply with the requirements of the state's bid law. The State Purchasing Division will transact the bid process for the agency.

Sales Tax Exemption

State agencies are exempt from paying sales taxes on their own purchases, Code of Alabama 1975, Section 40-23-4(11). However, agencies that sell items are required to collect and remit sales tax from customers. (Section 41-4-116 and Attorney General Opinion 2008-036)

Privilege and License Tax Exemption

State agencies are exempt from paying privilege and license taxes on leasing or renting tangible personal property (**Code of Alabama 1975**, Section 40-12-222).

Property Tax Exemption

State agencies are exempt from property tax (**Alabama Constitution 1901**, Sections 91 and 217(k)).

Lease of Office Space

Before an agency leases office space, the Office of Space Management within the Department of Finance should be contacted for leasing options. The office has adopted uniform standards for allocation of facilities owned or leased by the state. The office also makes recommendations concerning the need for and the best method of allocating or acquiring facilities. The Office of Space Management is shown in the contact list in this manual.

Travel Expenses

Any person traveling in the service of the state is entitled to reimbursement of travel expenses. There is no requirement that such persons must be state employees. All persons who travel in the service of the state must receive the amounts provided in these statutes. Contracts cannot be made in conflict with these amounts. State agencies have no discretion in the matter. Travel expense reimbursement must be made as specified by law. Travelers can, if they desire, waive payment of expenses. A traveler should provide a written statement to that effect, which should be retained in the agency's records. Travel expense reimbursements are addressed in state law at the **Code of Alabama 1975**, Sections 36-7-20 through 36-7-60. There are numerous opinions of the Attorney General on the subject of travel expenses. A search of these opinions online using the search term 'travel' will likely yield an opinion that clarifies any issue in question.

The laws governing travel expense reimbursements also apply to payment of travel expenses to those under contract with the agency. Reference Attorney General Opinion 1986-289.

Per Diem (Inside the State Only) - Travel expense reimbursement for persons traveling inside the state is addressed by the **Code of Alabama 1975**, Sections 36-7-20 (per diem) and 36-7-22(mileage). Statutes provide for a specific daily allowance, known as per diem, and payment of mileage at a specified rate. The per diem rate is set by the governor and must be no less than \$75. The mileage rate is set at the mileage rate allowed by the Internal Revenue Code for income tax deductions, which is set at least every year. Unless an agency's enabling statutes allow payment of actual expenses for travel inside the state, the per diem method must be used. However, the **Code of Alabama 1975**, Section 36-7-21(a) authorizes payment of actual expenses when attending or assisting in hosting a convention, conference, seminar, or other meeting of a national organization of which the state is a dues-paying member that is held within the state

Time in Travel Status	Per Diem Entitlement
6 hours or less	No per diem allowance
6 to 12 Hours	\$11.25 (1 meal allowance at 15% of a per diem allowance of \$75)
More than 12 hours but not overnight	\$30 (1 meal at 15% of the daily per diem rate of \$75 + ¼ of the daily per diem rate of \$75)
Overnight	\$75 per day or partial day in travel status (never less than two days)

Outside the State (Actual Expenses)

Persons who travel out-of-state on state business are entitled to be reimbursed for actual and necessary expenses including air fare, registration fees, lodging, meals, etc. The words *actual* and *necessary* should be taken literally. The traveler must have actually incurred the expense and it must be necessary to accomplish the travel. Some expenses not considered necessary are:

- Expenses of others
- Additional expenses associated with family members (use of suite, additional room, meals, etc)
- First class flight accommodations
- Alcoholic beverages
- Claim for meal, when meal is furnished at a conference
- Sight-seeing expenses
- Additional hotel expenses, such as charges for gym or spa.
- Expenses incurred during unnecessary additional days of travel
- Unnecessary use of more costly method of transportation

Attorney General Opinion dated September 9, 1975 to Betty Frink, State Auditor, states that, "Any person traveling on state business outside of Alabama must travel on tourist-class ticket unless tourist-class is not available."

Approvals

For executive branch agencies (agencies that are not legislative or judicial), all out-of-state travel paid for by the agency must be pre-approved by the governor. See ***Code of Alabama 1975***, Section 36-7-21(a) in the last sentence of the paragraph.

Documentation of Expenses

Claims for reimbursement of travel expenses should be accompanied by documentation sufficient to reveal the nature and extent of expenses actually incurred by the traveler, such as itemized receipts for hotel and meal charges. Here are some of the requirements for documentation:

Receipts must indicate the date, name, and location of the vendor, with an itemized listing of goods or services rendered. Restaurant receipts must also indicate the number of persons served.

The traveler may submit meal expenses of up to \$39 per day without providing receipts. When meals are provided for the traveler at a conference or other meeting, the \$39 amount allowed per day without receipt documentation is reduced by \$13 for each meal provided. For audit purposes, retain a copy of the conference itinerary.

Breakfast is only allowed for travel beginning at or before 6 a.m., and dinner is only allowed if a traveler will be returning to base after 6 p.m.

The Department of Finance *Fiscal Policy and Procedures Manual* addresses the requirements for documentation necessary for travel expense reimbursement. The requirements in the manual are based on federal guidelines found in IRS Publication 463. Failure to provide proper documentation mandated by the manual can result in audit findings and demand for the return of funds from the traveler.

Note – Credit card receipts submitted with claims must always indicate the items purchased.

How to Claim Payment for Actual Expenses

Complete form FRMS-6A, Statement of Official Out-Of-State Payment. Attach the governor's approval, the conference registration and/or itinerary, airline tickets indicating the name of the traveler and amount, registrations, motel/hotel receipts, any parking fees, taxi fare, etc. If daily meals were more than \$39.00 in total, receipts must be attached. Be sure to make copies for your own records. Submit the signed and notarized form with the supporting documents to your agency's accounting staff.

Forms can be obtained from the State Comptroller's Internet website at www.comptroller.alabama.gov . Select 'Reports and Forms' then 'Online forms'.

Note - Travel expense online forms are in Microsoft Excel format and do some of the math for you.

Motor Pool Vehicles Required for Employees based in Montgomery

State employees who are based in Montgomery and are required to travel by automobile on official business must use State Motor Pool vehicles rather than their personal vehicles, unless a motor pool vehicle is not available at the time of travel or an exemption has been granted by the director of the Department of Finance. The comptroller will not reimburse a traveler for the use of a privately-owned vehicle without a motor pool non-availability certificate or an approved exemption letter. Exemption requests must be approved by the agency or department director prior to submission to the director of finance, and must be based upon a legitimate need. Motor pool exemption letters approved during previous administrations are not accepted by the comptroller.

Reimbursements for items purchased by employees or board members

Sometimes it is necessary for an employee or board/commission member to purchase items for official use. For instance, an inspector may need to obtain file folders while in the field. For such purchases, an original receipt should be obtained and submitted to the agency prior to reimbursement. State agencies are not required to pay sales tax. However, it may be necessary to pay sales tax on these purchases. When possible, agencies should set up a credit account where purchases may be made without the incurrance of sales tax. **Note – credit card receipts or other documentation submitted with the claim must always indicate the items purchased.**

Food

Normally, state agencies are not authorized to expend state funds to provide meals or refreshments to employees or board or commission members who are not in a travel status.

Several Attorney General Opinions address the issue of providing meals to persons not in a travel status. Opinion 2001-168, to Robert L. Childree, dated April 26, 2001, states “A state agency may not provide refreshments at a break during a meeting that does not extend through lunch or a mealtime. The opinion to Honorable Tommy Flowers, AGO No. 2001-102, is modified to the extent that it conflicts with this opinion.”

- Opinion 2000-044 and Opinion 2000-045, dated December 14, 1999, to Dr. Melissa M. Galvin, Executive Director of the Commission on Aging, states “The Senior Citizens Hall of Fame Commission may use public funds to pay for a reception and/or banquet where the banquet furthers the public purposes for which the Commission was established.” Also, “... [If] the meals are incidental to the meeting, it is appropriate for public funds to be used to finance such a meeting...In order for the meals to be an incidental part of the meeting, the primary purpose of the gathering must be to have an official meeting at which business is conducted, not a social gathering at which food is provided.”
- Opinion 2001-102 to Tommy Flowers, dated February 27, 2001, states “The State Personnel Department may provide meals and/or refreshments at job analysis meetings, day-long examinations, and consent decree compliance meetings where the meals and/or refreshments are merely incidental to the meetings.”

Section Fifteen: Property

State Auditor's Office, Property Inventory Control Division (PIC)

The State Auditor's Office is responsible for enforcing laws regarding non-consumable property held by state agencies. In meeting this requirement, the State Auditor's Office, through the Property Inventory Control Division (PIC), has adopted rules surrounding property accountability and conducts periodic 100% audits of each agency's property. Property that is unaccounted for is reported to the Attorney General's Office, as required by ***Code of Alabama 1975***, Section 36-16-9. The State Auditor's Office uses the computer software, Protégé, to manage the state's property. Attorney General Opinion 2003-180 states that, "The State Auditor may require state agencies to use an electronic inventory control system established or specified by the State Auditor."

Appointment of Property Manager

The head of each state agency must designate one of its employees as property manager, as mandated by the ***Code of Alabama 1975***, Section 36-16-8(1). The head of the agency assumes responsibility for the agency's property if no property manager has been designated. The designated property manager must contact the Property Inventory Control Division within five work days of being assigned to that position to schedule an orientation. A "Designation of Property Manager" form must be completed and submitted to PIC Division. A copy of the form should be retained at the agency for audit purposes.

The property manager is responsible for all property, except that for which a hand receipt has been executed by the person responsible. For example, if an employee or official takes possession of a laptop computer to complete agency work at home, he or she must complete a hand receipt, which is to be kept on file at the agency. The hand receipt relieves the property manager of responsibility for the computer. The property manager has the duty to ensure that no property is entrusted to anyone other than agency employees or officials. Anyone assigned or having possession of personal property will be held strictly accountable, regardless of value. See Attorney General Opinion 96-130, dated February 9, 1996, and Opinion 97-035, dated November 5, 1996.

The property manager is required to maintain property records in accordance with the State Auditor's *Property Manual*. When changes occur, such as additions or deletions, the property records should reflect the changes. Changes are not limited to additions or deletions. When property changes hands or locations, such changes should be made in the property records and submitted to PIC Division. It is up to the property manager to ensure that the Property Inventory Control Division (PIC) has up-to-date information and that the property database is always accurate and complete.

The property manager, upon receipt of property, has the duty to affix a property inventory control number to property items before placing them in use.

Leased Property

Leased property is required to be placed on inventory in the same manner as property that is not leased. Leased property should be additionally labeled “LEASED FROM (give the company name, address and telephone number)”. If state officials or employees bring personally-owned property to the office, such property will be labeled or marked “Personal Property of (owner’s name)”.

State Auditor’s Property Records Are the Agency’s Official Property Records

The records in the state auditor’s Protégé database are the official property inventory records of each agency. The property manager should periodically check the accuracy of the records and make any necessary corrections. Attorney General’s Opinion 2003-180 states that, “The State Auditor may require state agencies to use an electronic inventory control system established or specified by the State Auditor.”

Caution - The Examiners of Public Accounts will audit the accuracy and completeness of the records in the state auditor’s database and will hold each agency responsible for ensuring that the records are complete and accurate.

Termination of Property Manager Duties

When a property manager ceases to be the property manager, the director of the department or agency is required to immediately notify in writing the Property Inventory Control Division. The division is required to immediately check the inventories of all property in the department or agency, and the successor to the property manager is required to execute a written receipt for all property received into his or her custody or control. The last payment of salary due the property manager is required to be withheld until a complete check of the inventory of the property has been made and approved. In the event of any shortages, the property manager shall be held strictly accountable. (*Code of Alabama 1975*, Section 36-16-8(6)).

Physical Inventory of Property by Agency

Every 6 months for some, every 12 months for others.

Every 6 months - The *Code of Alabama 1975*, Section 36-16-8 (1) requires that the property manager shall make a full and complete inventory of all nonconsumable personal property and certain other sensitive items of \$500 or more. The law states that the inventory shall show the complete description, manufacturer’s serial number, cost price, date of purchase, location, custodial agency, responsible officer or employee, and the state property control marking. **A copy of the inventory shall be submitted to the Property Inventory Control Division on October 1 and April 1 of each year.** Each inventory shall show all property acquired since the date of the last inventory. When any inventory fails to show any property shown on the previous inventory, then a complete explanation accounting for the property or the disposition thereof shall be attached to the inventory and submitted to the PIC Division. All property managers shall keep in their files at all times a copy of all inventories submitted to the PIC Division, and the copies shall be subject

to examination by any and all state auditors or employees of the Department of Examiners of Public Accounts, as directed by.

Every 12 months - For most state agencies, transactions involving nonconsumable personal property are made directly through the Internet to the State Auditor's Protégé database by the state agency. Consequently, the agency's records and the State Auditor's records are the same records. Agencies that are not on-line are required to periodically submit a Microsoft Excel spreadsheet of changes to the State Auditor's PIC Division where they are entered into the Protégé database by the division's personnel. The ***Code of Alabama 1975***, Section 41-1-6 states that, **"After the department has gone on-line with the Department Property Accounting Control System and is using scanning technology for inventory purposes, the property manager of each department or agency of the state shall make a full and complete inventory at least once every 12 months of all nonconsumable personal property, except books, of the value of five hundred dollars (\$500) or more acquired or used by the department or agency."**

Caution – State law in the ***Code of Alabama 1975***, Section 36-6-9 states that, "The Examiners of Public Accounts, in making their examination or audit of the accounts and records of each state department or agency, shall compare the inventory of personal property of the department or agency kept by the Property Inventory Control Division with personal property in the custody of the department or agency, and shall include a statement of the result of the comparison in their report."

Hand Receipts

State law requires that when any property is entrusted to other employees or officers of the agency, the property manager shall require a written receipt of the property so entrusted. This procedure is outlined in the ***Code of Alabama 1975***, Section 36-16-8(2). Attorney General Opinion 2002-333 to Susan D. Parker, State Auditor, states that, "When property is assigned to a specific employee, that employee is to execute a written receipt of the property." A hand receipt relieves the property manager of responsibility, and the person signing the hand receipt will be held strictly accountable for the property entrusted to his or her care. **The State Auditor's Property Manual states that, "Hand receipts are valid from the time prepared until the next required physical inventory. Hand receipt(s) must be re-signed at the time of inventory. NOTE: A notarized affidavit stating a person has possession of an item is not a hand receipt. No relief of responsibility is given to the property manager through the completion of an affidavit. The hand receipt must be executed on the standard hand receipt form that has been approved by the Examiners of Public Accounts. The standard forms can be found in the Property Manual.**

Caution - The Examiners of Public Accounts will check to see that hand receipts are updated at least annually, and that they are accurate with respect to the location of the hand-receipted equipment.

Disposing of Property

State agencies are not authorized to decide how to rid themselves of unneeded or unusable property items. The ***Code of Alabama 1975***, Section 36-16-8(3) states that, “No property shall be disposed of, transferred, assigned, or entrusted to any other department, agency, or employee thereof without the written permission of the director of the Alabama Department of Economic and Community Affairs or the governor, or the designee of either of them.” The procedures for disposal of unneeded or unusable property items are found in the *Property Manual*.

Caution – The Examiners of Public Accounts will conduct tests to determine whether these procedures have been followed.

Penalties

State law in the ***Code of Alabama 1975***, Sections 36-16-8 through 11 provide the following penalties:

- ✓ The last payment of salary due the property manager shall be withheld until a complete check of the inventory of the property has been made and approved. In the event of any shortages, the property manager shall be held strictly accountable. Notwithstanding the foregoing, the property manager shall not be held accountable for property entrusted to any other employee or officer of the department or agency and for which he or she holds the written receipt of the employee or officer.
- ✓ The value of any personal property lost to the state due to the neglect or willful act of the person having the custody of the property shall be recoverable from such persons in an appropriate action instituted on behalf of the state by the Attorney General.
- ✓ In the event the head of any department or officer in charge of any office, bureau, board or agency of the state neglects to perform the duties imposed upon him by Sections 36-16-8 through 36-16-11, he shall be liable for the sum of \$5.00 for each day such neglect continues and for the value of any and all personal property losses to the state as a result of such neglect.

Section Sixteen: SMART Budgeting

Creation of SMART Budgeting

Acts of Alabama, 2004-50 (HJR89) states, “That all state agencies and entities receiving legislative appropriations are requested to submit to the Joint Legislative Budget Committee budget proposals for the 2005-2006 fiscal year to be submitted to the 2005 Regular Session and for each succeeding fiscal year. The Director of Finance is requested to inform each public agency or entity of our desires concerning this matter.”

To comply with this request, the Director of Finance implemented a system of budgeting that requires each agency to document a mission, a workload, a set of goals and objectives, the means of achieving the goals and objectives, and the measurement of actual performance toward achieving the objectives, the system to be named SMART, an acronym for Specific, Measurable, Accountable, Responsive, and Transparent.

SMART budgeting was designed to improve government by requiring organizational planning, linking plans to budget requests and appropriations, and creating meaningful performance measurements. See SMART budgeting’s website, www.smartbudgeting.alabama.gov, to obtain forms and instructions. You can also see other agencies’ information, which may help in the development of your budget information.

Caution -The Examiners of Public Accounts will review several items during their examinations, to include:

- Submission of SMART Budgeting documents
- Goals and objectives
- Performance indicators
- Performance reports

Discussion of Goals and Objectives and Reported Performance

Required Characteristics of a Goal

- Relates to the agency mission
- Is a stated target level of performance
- Addresses how well an activity is done, not whether it is done
- Must be measurable
- Must be numerical
- Expected to be achieved 3-5 years in the future

Required Characteristics of an Objective:

- Relates to achievement of a goal
- Is a stated target level of performance
- Addresses how well an activity is done, not whether it is done
- Must be measurable

Must be numerical
Expected to be achieved in one year
Includes a performance indicator (units in which performance is to be reported)

Required Characteristics of Reported Performance

Must show the degree of achievement of the objective
Must be in the same units as the objective and the performance indicator
May be reported quarter by quarter or for the year
Are the result of procedures designed to capture the performance data
Supported with records that
 Show the source of the performance data
 Show the method used to obtain the performance data
 Allow later re-creation of the performance data from the records
 Are retained for audit

Good Examples

- **GOAL - Complete initial processing of all registration filings within five business days of receipt by 2011.**

OBJECTIVE – Issue registration licenses where appropriate for complete applications within seven business days of receipt

PERFORMANCE INDICATOR - Days

PERFORMANCE – All issued within stated number of days of receipt

- **GOAL - Conduct a routine audit of at least 100% of state registered and state domiciled licensees annually so that they are audited within a 3-year cycle by 2012.**

OBJECTIVE #1 – Conduct on-site component of routine audits within 2 day time frame.

PERFORMANCE INDICATOR - %

REPORTED PERFORMANCE – % conducted within 2 days.

OBJECTIVE #2 – Conduct routine audit of at least 75% of state registered and state domiciled licensees annually so that they are audited within a 3-year cycle.

PERFORMANCE INDICATOR - %

REPORTED PERFORMANCE - % of state registered and state domiciled licensees audited within the 3-year cycle.

OBJECTIVE #3 – Produce 1st report on completed routine audits within 14 day time frame.

PERFORMANCE INDICATOR – Avg Days

REPORTED PERFORMANCE – Average days to produce 1st report on completed routine audits.

OBJECTIVE #4 - Complete 6.25 audits per FTE

PERFORMANCE INDICATOR - #Audits
REPORTED PERFORMANCE - # of audits per FTE

Caution – The main attention of examinations by the Examiners of Public Accounts will be directed to the Quarterly Performance Report, especially concerning compliance with instructions from the Department of Finance and the accuracy and completeness of reported performance data and associated supporting records. The examiners will determine whether reported data can be reproduced from available records.

Section Seventeen: Audits, Examinations, Reviews by the Examiners of Public Accounts

The Department of Examiners of Public Accounts performs financial and legal compliance examinations, sunset reviews, and federal Single Audits of the operations of state agencies. The examiners also audit Alabama's Comprehensive Annual Financial Report (CAFR), produced by the State Comptroller's Office.

Compliance Examinations

The ***Code of Alabama 1975***, Section 41-5-14(a), provides for periodic examinations and audits of state and county offices, departments, boards, etc., by the Examiners of Public Accounts. These are termed compliance examinations.

"The books, records, vouchers and accounts of every state and county office, officer, bureau, board, commission, corporation, institution, department and agency shall be examined and audited at least once in every period of two years and more frequently or continuously if that is deemed necessary or desirable by the Chief Examiner. The books, records, vouchers and accounts of municipal boards of education may be examined and audited upon request."

In addition to performing these audits, the Chief Examiner is empowered by law to mandate accounting procedures and forms, where necessary.

The ***Code of Alabama 1975***, Section 41-5-23 charges financial officers to keep uniform accounts.

"Every state and county officer shall keep the books, records and accounts and make the reports of his office in accordance with such systems, procedures and forms as may be prescribed by the Chief Examiner pursuant to this chapter. Any officer who fails or refuses willfully to do so and the surety on his official bond shall be liable for a penalty of \$50.00 for each week such failure or refusal continues. Penalties imposed and collected under this section shall be paid into the General Fund of the State Treasury."

Audit of the State's Comprehensive Annual Financial Report (CAFR)

The Office of the State Comptroller prepares the state's Comprehensive Annual Financial Report (CAFR). This report presents financial information on state government as a single entity. It is the responsibility of the Department of Examiners of Public Accounts to issue an opinion on the financial statements of the CAFR based on the Examiners' audit. CAFR information is required from all agencies, including those maintaining checking accounts outside the State Treasury.

Caution - Production of the CAFR requires the assistance of all agencies, which are asked to supply accurate financial information at fiscal year-end. Failure of agencies to supply the information by the deadline can result in an audit finding.

A CAFR packet is sent to all agencies around October 1 of each year. The information requested in the packet should be submitted to the comptroller's office by the deadline,

which is usually near the end of October. The packet requests all agencies to make adjustments and accruals for accounting events that have not been captured through daily transactions. Items that may require adjustments and accruals include accounts receivable, accounts payable, deferred revenue, depreciation, capital leases, sale of fixed assets, inventory adjustments, investments, and certain balance sheet accounts unique to individual funds. In addition, certain information is requested in order to meet financial statement note disclosure requirements. “Comparative Balance Sheet by Fund” and “General Information” forms are included in the packet. General instructions are included for completing the forms in the packet, in addition to information on who to contact with questions. Additionally, more detailed instructions can be found in Chapter 8 of the Department of Finance’s *Fiscal Policy and Procedures Manual*, available on-line. Each form should be completed and returned to the comptroller’s office.

Single Audits (Federal Compliance)

Single Audits are audits of agencies that spend federal money, usually in the form of grants. Single Audits are performed in accordance with either the Federal Single Audit Act Amendments of 1996, or OMB Circular A-133, *Audits of State, Local Governments and Non-Profit Organizations*. For federal Single Audit purposes, Alabama is audited on a state-wide basis. Federal Single Audits have the same requirements as financial and legal compliance audits, with the added requirements of determining:

- The effectiveness of internal controls and reasonable assurance that the state is managing federal awards in compliance with laws, regulations, contracts, and grants applicable to federal programs
- Compliance with laws, regulations, contracts, and grants, in all material respects, applicable to each of its major federal programs
- Whether the Supplementary Schedule of Expenditures of Federal Awards is fairly presented in all material respects in relation to the financial statements taken as a whole

Compliance Examinations

The Department of Examiners of Public Accounts conducts examinations of state agencies, including regulatory boards and commissions, to ensure that the agencies are complying with applicable federal, state, and local laws, rules and regulations, policies and procedures, resolutions, legally adopted motions, sound financial practices, etc. The examiners also check to ensure that control procedures are in place to protect assets and ensure compliance with laws.

Sunset Reviews

The Department of Examiners of Public Accounts conducts reviews of agency operations on behalf of the Joint Legislative Sunset Committee and produces reports of these reviews.

Committee Composition - The twelve members of the committee are equally divided between the Senate and the House of Representatives. Three members are elected from each house and serve during their terms as legislators, or until successors are elected. Two members from each house are appointed by the respective presiding officers of the

houses. Two ex officio members, the President Pro Tempore of the Senate and the Speaker Pro Tem of the House of Representatives, serve on the committee. Finally, a chairman is elected by the committee members, alternating annually between the Senate and the House of Representatives. If any member is unable to fulfill his or her duties and resigns from the committee, the presiding officer of the house in which the vacancy occurs chooses another member to fill the vacancy. Chairmanship of the committee rotates annually between the Senate and the House of Representatives.

Scope of Committee Operations - The Sunset Committee must regularly review the operations of state agencies named in the law as subject to the sunset law, and can also review the operations of any other state agency. Either house of the legislature may, by resolution, require the Sunset Committee to review any agency of the state. The Sunset Committee can recommend one of three alternatives for each agency:

- Continuance without statutory modification
- Continuance with statutory modification
- Termination

The recommendations of the committee are in the form of bills submitted to the legislature in the chamber from which the chairman is selected. For an agency regularly scheduled in the law to be reviewed by the committee, a bill that specifically continues the agency must be passed into law or the agency must terminate operations by the following October. This automatic termination does not apply to other agencies reviewed by the committee.

Frequency and Timing of Reviews

The frequency of review is normally every four years for state agencies named in the sunset law in the ***Code of Alabama 1975***, Section 41-20-3. For agencies with sunset provisions in their enabling statutes, the review period is every four years unless a different schedule is provided. The Sunset Committee can review agencies sooner than scheduled by law.

Review of an enumerated agency by the Examiners of Public Accounts is done in the calendar year prior to the regular legislative session that precedes the date on which the agency is scheduled by law for termination. For example, agencies scheduled to in the law to terminate on October 1, 2010 are reviewed in the 2009 calendar year. Additional agencies may be reviewed when directed by the Sunset Committee.

When an agency under review exhibits problems the Sunset Committee believes need continuing attention, they may be reviewed again sooner than scheduled in the law.

Committee Procedures Generally

The following procedures have evolved over time and have remained relatively constant from year to year. The ***Code of Alabama 1975***, Section 41-20-6(c), requires agencies under review to provide specified information about their operations and any other information the committee desires concerning agency operations.

The Department of Examiners of Public Accounts assists the committee by acting as its agent to obtain, compile, and evaluate information concerning agency operations, and by producing a report on the operations of each agency for use by the committee. These reports become public documents following their presentation to the Sunset Committee, and are published at the Examiners of Public Accounts' website.

The examiners' report to the Sunset Committee will normally include, and the committee will consider, among other things, the following:

- Compliance with the state's Open Meetings Act
- Compliance with the state's Administrative Procedure Act regarding proper adoption of administrative rules
- Compliance with specific statutory requirements included in the agency's statutes
- Determination of whether the agency is charging fees not authorized by statute, or is not charging fees it should be charging
- Determination that board/commission minutes are appropriate and record the official actions of the board/commission
- Identification of significant issues facing the agency and determination of how the agency is dealing or will deal with them
- Determination of the nature and extent of agency communication with the public and with its clients
- Determination that the agency's rules are not in conflict with state statutes
- Comparison with other states
- Explanation of any large changes or pronounced trends in financial status, both overall and within categories presented on the financial schedule
- Evaluation of the agency's licensing process
- Evaluation of the agency's regulatory and disciplinary process, especially focusing on the handling of complaints
- Evaluation of other agency processes that are not licensing/regulatory in nature
- Development of statistical information necessary for presentation of the report or to support report information
- Determination of the extent of overlapping jurisdiction with other agencies
- Confirmation of statements concerning prior audit findings obtained at the entrance conference to determine if prior audit findings have been resolved
- Survey of board members, licensees, and complainants

The Sunset Committee also may consider any other information that may come to its members in their capacity as legislators and members of the Sunset Committee.

When reviewing agencies, the Sunset Committee is required by law to hold public hearings and receive testimony from the public and all interested parties. The committee schedules two-day meetings as frequently as necessary to review all of the agencies on its schedule. On the first day, representatives from the Examiners of Public Accounts brief the committee on their reports and answer any questions the committee may have. On the second day, a public hearing is held. The hearing

usually consists of a presentation by the agency head and by other interested parties, and questions by the Sunset Committee.

Sunset Committee meetings begin following the end of the regular legislative session on a schedule adopted by the committee at its first meeting. In addition to representatives from the Examiners of Public Accounts, an attorney from the Legislative Reference Service is routinely present at committee meetings.

The committee normally takes no official action until its final meeting, which is a business meeting to decide the contents of sunset bills. Once the contents of the bills have been determined, the Legislative Reference Service prepares the bills. At the discretion of the Sunset Committee chairman, the Examiners of Public Accounts and the Legislative Reference Service produce a narrative report to the legislature, explaining the bills and containing such other information as the chairman desires regarding the actions of the Sunset Committee.

Legislative Actions on Sunset Bills

The ***Code of Alabama 1975***, Section 41-20-10, describes the conditions of debate and voting on bills submitted by the Sunset Committee. The sunset bills are submitted to the legislative house of which the committee chairman is a member. On the tenth legislative day of the regular session, one hour after convening of the house of which the committee chairman is a member, sunset bills must become the first order of business from day to day until voting is complete. Other business may take precedence by a three-fifths vote of members present and voting.

On the fifth legislative day after passage of sunset bills by the legislative house in which they were introduced, sunset bills must become the first order of business from day to day in the other legislative house until voting is complete. Other business may take precedence by a three-fifths vote of members present and voting. The provisions of Section 41-20-10 limit debate.

Like other bills, sunset bills can be amended or substituted in the legislative committees or on the floor of either legislative house.

Cessation of Operations by Terminated Agencies

A bill to continue the operations of an agency named for review in the law is necessary to prevent its automatic termination. If a continuation bill does not pass, the agency automatically terminates on October 1 and can engage only in administratively winding up its affairs. The ***Code of Alabama 1975***, Sections 41-20-12 and 41-20-14, address cessation of operations by terminated agencies.

Section Eighteen: Examples of Common Findings

Frequent Non-Compliance Issues

Based on a review of legal compliance reports and sunset review reports, instances of non-compliance have a history of repeating themselves. The following list includes the most common noncompliance issues:

- Administrative Rules
 - Rules placed in effect without procedures required by the Alabama Administrative Procedure Act
 - No rules when a rule is required
 - Rules improperly enlarge upon the law
 - Rules in conflict with the law
 - Forms do not accompany published administrative rules
 - Agency not complying with its own rules

Examples

- “The Board adopted changes for its Administrative Rule 364-X-13-.03; however, the rule change was not processed according to procedures required by the State’s Administrative Procedure Act. Consequently, the rule change is not valid and is unenforceable.”
- “The Board has not set by administrative rule two fees required by statute. The Board’s enabling statutes require the Board to set a fee for a copy of a roster of licensed geologists and a fee for the replacement of any license lost, destroyed, or mutilated. The exact amount is not stated in the law. Since the exact amount is not stated in the law, the Board becomes responsible for setting the fee amounts. Setting the fee amounts creates Board policy that meets the definition of an administrative rule, which is required to be adopted and executed by the Board in accordance with procedures provided in the State’s Administrative Procedure Act in order to be valid and enforceable. The executive assistant stated that the charge for producing a paper copy of the roster would be \$0.25 per page, but that policy has not been adopted as an administrative rule. The *Code of Alabama 1975*, Section 34-41-16 states, “Copies of this roster shall be made available to the public upon request and payment of a reasonable fee.” The *Code of Alabama 1975*, Section 34-41-12(d) states, “A new license to replace any license lost, destroyed, or mutilated may be issued subject to the rules of the Board and payment of a fee established by the Board.”
- “The Board’s Internet website listed an application request fee for which there is no specific statutory authority or administrative rule that addresses fees. Consequently, the website presented a fee the Board had no authority to collect. Upon inquiry by the examiner, the Board’s executive secretary stated that the Board does not collect an application request fee. He further stated that the fee would be removed from the Board’s website. At the close of this examination, the fee had been removed.”

- “In the prior examination, we found that various fees charged by the Board were not within the limits prescribed by law. When fees are named within the law, the Board is prevented from charging additional fees or fees that differ from the amounts prescribed by law. Numerous opinions of the attorney general have stated that fees are limited to those specifically authorized by law. The following fee charged by the Board continues to be outside statutory limits. Prosthetists and Orthotists Dual Discipline License Fee – The Board’s administrative rule 746-X-2-.04(3)(c) and (d) provides for a dual-discipline license fee of \$800 and a single-discipline license fee of \$500. Since the licensing law does not provide for a dual-discipline license, the board can issue only single discipline licenses, and must charge a separate license fee for each discipline. The *Code of Alabama 1975*, Section 34-25A-12 provides for a license fee [singular] not to exceed \$950 per discipline per term of license. This language requires the Board to set one fee per discipline and to charge it for each discipline that is licensed. By adopting its administrative rule 746-x-2-.04(3)(c) and (d), which provides for a fee of \$500 for a single discipline license and \$800 (\$400 per discipline) for a person licensed in both disciplines, the Board is providing a discount to dual licensed persons that is not authorized by law.”
- “The Board has by administrative rule improperly set a quorum different from the quorum provided for by law. The Board’s enabling statutes are silent regarding the number of members required to compose a quorum. However, the Board’s administrative rule 746-X-1-.07 states that “Four (4) licensed prosthetists and/or orthotists or orthotic suppliers who are members of the Board shall constitute a quorum.” The Code of Alabama 1975, Section 41-22-3(8) provides that “No less than a majority of the members of a multimember agency shall constitute a quorum authorized to act in the name of the agency, unless provided otherwise by statute.” Because the Board’s enabling statutes are silent as to quorum, the quorum is therefore required to be a majority of the Board members rather than the four-member quorum stated in the Board’s rules. The Board currently consists of ten members of which a quorum would be six members. Numerous Attorney General Opinions have held that state agencies cannot use rules to change law.”
- “The Board’s administrative rules were not amended to reflect changes in the Board’s licensing law. *Acts of Alabama*, Act Number 2003-61 amended the *Code of Alabama 1975*, Section 34-25-4 to provide diversity in the Board membership and to increase the membership of the Board from three to five members. The Board’s administrative rule 740-X-2.01 addresses Board membership and was not amended to include the requirement for diversity and the increase in Board membership. We brought this condition to the Board’s attention in the last examination and recommended that the Board update its administrative rules to conform to the amendments to its licensing law provided in Acts of Alabama, Act Number 2003-61. No action was taken, and this condition continues to exist.”

- “The Board’s forms are not included in the Board’s administrative rules on file with the Legislative Reference Service’s Administrative Procedure Division, as required by law. The Code of Alabama 1975, Section 41-22-3(9) as, “Each agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy, or that describes the organization, procedure, or practice requirements of any agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule or by federal statute or by federal rule or regulation; provided, however, all forms shall be filed with the secretary of the agency and with the Legislative Reference Service and all forms, except intergovernmental, interagency, and intra-agency forms which do not affect the rights of the public and emergency forms adopted pursuant to Section 41-22-5, shall be published in the Agency Administrative Code.”

- “On four occasions, the Board failed to meet on the dates prescribed by its rules. The Board did not meet on the second Thursday of the months of January, April, July and October as stated in Rule 135-X-3-.01 (1), which has been in effect for the last three years. The Board did not meet in January 2006. The Board met on Wednesday, October 19, 2005, on Tuesday, April 18, 2006, and on Friday, July 21, 2006. The ***Code of Alabama 1975***, Section 34-2A-3 (i) requires the Board to hold four or more meetings a year. The Board’s administrative rule 135-X-3-.01 (1) states, “The Board shall hold not less than four meetings each year. The Board shall meet in the conference room of the Board of Examiners’ office building at 10:00 a.m. on the second Thursday of the first month of each quarter (January, April, July, and October) unless such date is a federal or state holiday, as posted on the Board of Examiners’ website or as notified in the Alabama Administrative Monthly.”

- Meetings
 - Public notice of meetings was not posted on the Secretary of State’s website
 - Voting with less than a quorum present

 - “The Board did not promptly post notice of its upcoming meetings as required by the State’s Open Meetings Act. State law in the ***Code of Alabama 1975***, Section 36-25A-3(b) requires the Board to post notice of its meetings, “as soon as practicable [reasonably capable of being accomplished] after the meeting is called and in no event less than 24 hours before the meeting is scheduled to begin...” The next meeting of the Board is routinely announced at the close of the current meeting. The number of days between announcement and posting of the next meeting ranged from 20 days to 110 days, with an average of 58 days.”

 - “During the period examined, there were 19 instances for which notice of meetings was posted more than a month after the date of the meeting was set, and in two instances no notice was posted. These practices do not conform to the requirements of the State’s Open Meetings Act (***Code of Alabama 1975***, Section 36-25A-3(b), which requires the Board to post prior notice of all of its meetings

and to post them on an Internet website maintained for that purpose by the Secretary of State “as soon as practicable [reasonably possible] after the meeting is called.”

- “The Board held two meetings without a quorum present. Only four members were present for the April 30, 2007 Board meeting, and only five were present at the July 21, 2007 Board meeting. Only ten members were serving at the time of these meetings, of which a quorum is six members. The Alabama Supreme Court stated in *Auburn University v. Advertiser Co.* (867 So.2d 293) that, “The attendance of a quorum is a condition precedent to everything. Until then there is an absolute incapacity to consider or act in any way upon any matter. When the body is so legally convened and constituted, it has power to consider what is within its jurisdiction and authority, and to declare the existence of facts other than the fact of its own existence. Until it comes into existence, it cannot proceed, nor make any record of its proceedings. It has no authority to make a record showing anything. Less than a quorum are without power to act or bind anybody in any manner. Their action, being absolutely void, may be ignored or attacked in any proceeding.”

- Minutes

- Minutes of all meetings were not taken
- Minutes were not signed
- Minutes did not reflect individual votes
- Minutes were not approved
- Minutes do not document all official actions decided by board or commission
- “The State and Local Government Records Commissions’ Guidelines for Taking Formal Meeting Minutes provide that official government body meeting minutes should be signed and dated by the recording secretary and the presiding officer should sign the minutes when the minutes are approved. In the review of the minutes of the meetings of the Committee, there was one instance where the presiding officer did not sign the minutes.”
- “Votes to enter executive session were not individually recorded in the minutes, as required by the State’s Open Meetings Act. The *Code of Alabama 1975*, Section 36-25A-7(b) states that, “A governmental body desiring to convene an executive session, other than to conduct a quasi-judicial or contested case hearing, shall utilize the following procedure:... (3) The vote of each member shall be recorded in the minutes...”
- “The State and Local Government Records Commissions' Guidelines for Taking Formal Meeting Minutes provide that official board meeting minutes should be signed by the recording secretary and the presiding officer (chairman). The minutes should be signed once approved. In a review of the minutes of the meetings of the Alabama Public Health Care Authority, there were two instances

where the minutes were not approved by the Authority at the following board meeting.”

- “Contract employees claim that they were given benefits not disclosed in their employment contract or the minutes of the board. Since the benefits are written in the contract or minutes, the official position of the board is not recorded; therefore, the employees are not entitled to such benefits.”

○ Financial Issues

- Inadequate separation of duties surrounding custody and accounting for funds
 - Inadequate documentation to support receipts and/or disbursements
 - Payment for unallowable travel expenses
 - Incorrect travel expense reimbursement
 - Noncompliance with the Alabama Competitive Bid Law
 - Charging fees not authorized by law, most frequently enlarging on the law (previously covered in Administrative Rules)
 - Not charging fees required by law to be charged (Previously covered in Administrative Rules)
 - Failure to follow up on bad checks
 - Failure to deposit receipts in a timely manner
 - Payment twice for same service
 - Legal service contracts were not submitted to the Legislative Oversight Committee for review
 - Professional services were not procured via request for proposal (RFP) process
 - Payment of taxes
 - Failure to report unclaimed payments to the Treasurer
-
- “Codification of Statements on Auditing Standards, Section 319.06, defines internal control as a process, affected by an entity’s board of directors, management, and other personnel, designed to provide reasonable assurance regarding the achievement of objectives in the reliability of financial reporting and compliance with applicable laws and regulations. A deficiency was noted in the segregation of duties. The accountant who reconciles the bank accounts has the ability to create and post journal vouchers to the general ledger and also has access to the accounts payable module from which signed checks are prepared.”
 - “Internal control procedures should be in place to ensure that all accounts are substantiated by adequate supporting documentation. The board did not provide documentation to support prepaid items totaling \$198,453.48.”
 - “Information was not made available for audit purposes. Numerous requests, both verbal and written beginning in February 2008, were made regarding this information.”
 - “While attending an out-of-state conference, one Board member improperly claimed and was reimbursed for three meals that were provided by the conference

over a two-day period, an overpayment of \$39.00. The member selected the available option of claiming the daily maximum meal reimbursement of \$39.00 without submitting receipts, without considering the effect of having been provided the meals. In addition, a Board member traveling out-of-state was reimbursed \$9.00 for alcoholic beverages. The Department of Finance Fiscal Policy and Procedures Manual states that, "When meals are provided to the employee, the \$39.00 [daily] amount allowed for meals with no receipts is to be adjusted downward by \$13.00 for each meal provided. Meals are to be reasonable for the location and individuals will not be reimbursed for alcoholic beverages." These amounts were reimbursed when brought to the travelers' attention."

- "Of forty-eight claims for travel expenses reviewed, five had errors. The errors included three claims that did not show a departure/return time, one claim in which a Board member was paid the incorrect per diem rate, and one claim in which a Board member was paid in-state travel allowances from the location where the Board member crossed the state line into Alabama rather than from the member's base. Attorney General Opinions Number's 89-00288 and 89-00371 state that a Board member traveling to a Board meeting from an out of state location where the traveler was on personal business should receive travel allowances from the member's base rather than from the out of state location."
- "Travel allowances were not always paid in accordance with state law and regulations. We identified two instances where persons traveling on behalf of the Commission were paid a daily meal allowance when travel status for less than 6 hours. In 13 instances, one employee was reimbursed for travel on official state business in a privately owned vehicle for mileage in excess of that which was actually traveled. We identified one occurrence for which the employee was reimbursed for approximately ten times the actual mileage traveled. We noted two occurrences in which Montgomery-based employees did not obtain non-availability slip from the State Motor Pool prior to renting a car for travel on official business. The Finance Department's Fiscal Policies and Procedures Manual, Section 6-5F 1 b requires Montgomery-based employees to obtain a non-availability slip from the State Motor Pool as a prerequisite to receiving mileage reimbursement for travel in a private vehicle. As an alternative, a memo from the Finance Director dated 8/28/03 informs state agencies that rental cars from a specified vendor may be used in lieu of a private vehicle, but there is no authorization to utilize a rental car as an alternative to seeking a vehicle from the State Motor Pool."
- "Proper internal controls require that disbursements of funds be made in a timely manner. Some vendor invoices were not paid timely (within 30 days of receipt as stated on the invoice)."
- "Proper internal controls require monthly bank reconciliations to be performed for each bank account of the Commission's accounting records. Bank reconciliations were not performed for the entire fiscal year 2007."

- “A lack of necessary procedural controls or the failure to follow prescribed procedures indicated a deficiency in internal control. 1) Procedures were not in place to ensure adequate security of the accounting system. All employees of the business office have access to prepare and post journal entries to the general ledger without approval or review. The employees that reconcile the bank statements have access to the cash receipting module. 2) Procedures were not in place to ensure the security of the check signature stamp. The stamp is maintained in an office desk drawer unlocked that is easily accessible to unauthorized personnel. 3) Procedures were not in place to ensure the security of the check writing machine. The keys to the check machine are left in the machine in an unlocked room that is easily accessible to unauthorized personnel. 4) Procedures were not in place to ensure the security of blank checks. Blank checks are left in a box next to the check writing machine in an unlocked room that is easily accessible to unauthorized personnel.”
- “Expenditure testing revealed that 3 payments totaling \$9,949.87 were made for the rental of a truck for the District #4 Commissioner. The Alabama Competitive Bid Law requires payments exceeding \$7,500 to be bid. The Commission exceeded the required bid limit and did not bid the truck rental for fiscal year 2007. Furthermore, these payments are still being made through the current period.”
- “Checks returned for nonsufficient funds were not always posted to the records as being returned.”
- “Amounts received were not always deposited into the bank in a timely manner. This condition unnecessarily increases the risk of loss or misuse of state funds. In addition, amounts held in the bank were not always promptly certified into State Treasury for use by the Board, thus delaying the availability of funds for use by the Board. In reviewing nine certificates of deposit into the State Treasury, which were composed of multiple bank deposits, 27 bank deposits were certified into the Treasury between 16 and 86 days after the deposit in the bank. A review of deposits disclosed six fees received that were held at the Board’s offices between 21 and 62 days before being deposited.”
- “An adequate system of internal controls includes policies and procedures to prevent duplicate payments. The Department made a duplicate travel payment to an employee in the amount of \$75. We notified the employee and the employee repaid the amount charged.”
- “A review of legal services provided by three private attorneys revealed that the Board did not submit the contracts for these services to the Contract Review Permanent Legislative Oversight Committee as required by state law and did not obtain Deputy Attorney General appointments for the attorneys as required by the Attorney General, or obtain the Governor’s approval to contract the attorneys at a

higher rate than the standard \$85/hour, as required by the State's Attorney General. The *Code of Alabama 1975*, Section 29-2-41.2(b) states that, "Notwithstanding any other provisions of this article, all contracts for employment of an attorney to provide legal services, including contracts involving an attorney providing legal services under an agreement with the Attorney General, shall be reviewed by the committee." In Attorney General Bill Pryor's memorandum dated February 4, 2003 and attached policy statement, to all state departments, boards, agencies, commissions and institutions, he states that, "An attorney must be appointed in writing and approved [by the Attorney General's Office] before performing any work for the agency." . . . "Legal services are to be provided at the rate of \$85/hour; however, in the event that an attorney is entitled to a higher rate because of the specialty or uniqueness of the situation, arrangements must be made with the Governor's Legal Advisor to approve such higher rate." "All legal services contracts must be sent to the Legislative Contract Review Committee."

- "During the prior examination, the Board utilized the professional services of three private companies. None were obtained by means of the competitive selection process required by the *Code of Alabama 1975*, Sections 41-16-70 through 41-16-72. We recommended that the Board should obtain professional services in accordance with procedures provided in the *Code of Alabama 1975*, Sections 41-16-70 through 41-16-72 and should maintain such records as are necessary to show compliance with these procedures. In the current period examined, the Board did not comply with Alabama's competitive selection process before signing a contract with New Tech Solutions to provide various IT services. The contract amount is \$60 per hour, not to exceed \$100,000 over the length of the contract. The Board did not solicit requests for proposal (RFP) or otherwise afford other IT professionals an opportunity to apply for the work contracted with New Tech Solutions. The *Code of Alabama 1975*, Section 41-16-72 requires that, "Notice of need for professional services shall be widely disseminated to the professional community in a full and open manner. Procuring state entities shall evaluate such professionals that respond to the notice of need based on such state entity's qualification-based selection process criteria. Any such procuring state entity shall then make a good faith effort to negotiate a contract for professional services from the selected professional after first discussing and refining the scope of services for the project with such professional."
- "We found several instances in which an employee of the Commission's historic sites made personal purchases of minor items needed for maintenance of the site and was reimbursed by the Commission. Sales tax was paid on the purchases and was reimbursed by the Commission. As a state agency, the Commission is exempted from payment of sales tax by the *Code of Alabama 1975*, Section 40-23-4(a)(11)."

- “The Board has not reported or forwarded to the State Treasurer’s Unclaimed Property Division checks issued by the Survey that have remained uncleared by the bank for more than three years. The Board’s Map Fund Account retained six such checks in its account. The Alabama Disposition of Unclaimed Property Act of 2004 (Code of Alabama 1975, Sections 35-12-70 through 96) mandates that unclaimed and abandoned personal property be reported to the State of Alabama Treasury Office. Checks in dormancy three years are considered unclaimed and abandoned property.”
- Personnel
 - Inaccurate leave accrual start dates recorded for employees
 - Inaccurate annual, sick, personal, and compensatory leave balances
 - Incorrect computation of overtime
 - Inaccurate computation of longevity
 - Overpayments or underpayments at termination of employment
 - New Hire forms were not in the personnel files of newly hired personnel
 - Improper withholding taxes
- “The *Code of Alabama 1975*, Section 36-6-11 which states in part: “Each person employed by The State of Alabama, and all legislative personnel, officers or employees, including but not limited to Legislative Reference Service personnel, whether subject to the state Merit System or not, shall be entitled to and receive in a lump sum the first pay day of December each year the sum of three hundred dollars (\$300) per annum after such employee has served for a total period of five years and shall receive the payment until the tenth year of total service, at which time the payment shall be made in a like manner and at a like time but in the amount of four hundred dollars (\$400) per annum until the fifteenth year of total service, at which time the payment shall be made in a like manner and at a like time but in the amount of five hundred dollars (\$500) per annum until the twentieth year of total service, at which time the payment shall be made in a like manner and at a like time but in the amount of six hundred dollars (\$600) per annum until the twenty-fifth year of total service, at which time the payment shall be made in a like manner and at a like time, but in the amount of seven hundred dollars (\$700) as long as the employee remains in service.” Out of thirteen employees tested, one employee’s longevity counter was incorrect which resulted in an overpayment of one hundred dollars. This has been resolved by the Department.”
- “The Commission had incorrectly computed an employee’s leave progression start date (LPSD), thereby improperly crediting the employee with two month’s additional service time. An inaccurate leave progression start date can result in incorrect computation of leave balances and incorrect payment of amounts due. The error was corrected prior to completion of this examination.”
- “Compensatory time for Commission employees who are subject to the federal Fair Labor Standards Act (FLSA) overtime provisions was awarded at straight

time rather than time and one-half, as required by the FLSA. Employees governed by the Fair Labor Standards Act are subject to the provisions of Section 7(o)(1) of the Act, which states “Employees of a public agency which is a State, a political subdivision of a State, or an interstate governmental agency may receive, in accordance with this subsection and in lieu of overtime compensation, compensatory time off at a rate not less than one and one-half hours for each hour of employment for which overtime compensation is required by this section.”

- “During the prior examination, three employees were found to have leave balance errors. This type of error continues. In the current examination, we found errors in the leave balances of three other employees, including an understatement of annual leave of 1 hour, overstatement of annual leave by 4 hours, understatement of sick leave by 8 hours, and overstatement of sick leave by 20 hours. All of the errors occurred at the end of the year, with the errors for two persons consisting of incorrect leave balances brought forward into the new year. In the prior examination, we recommended that leave balances should be reported to all employees for confirmation at least monthly and immediately prior to payment of unused balances at termination of employment.”
- “One employee was improperly awarded compensatory time for each day worked in excess of eight hours rather than for hours worked [each week] in excess of 40 hours, as provided in the federal Fair Labor Standards Act in 29CFR778.103. Consequently, the employee was incorrectly compensated.”
- “Two employees used annual leave rather than accumulated compensatory time, a practice that does not comply with Rules of the State Personal Board #670-X-11-.07. Rule 670-X-11-.07 requires use of compensatory time before annual leave is used, unless such use would result in the loss of annual leave balance at the end of the year due to annual leave carryover limits.”
- “The *Code of Alabama 1975*, Section 36-26-26 states "Upon retirement, each employee who acquires sick leave pursuant to the State Merit System shall receive payment of 50 percent of his or her accrued and unused sick leave, not to include escrowed sick leave as provided herein, at the time of his or her retirement, and payments for the sick leave shall be made at the same rate as his or her regular pay, not to exceed 600 hours. In the review of 25 employees that were terminated, separated, or retired during the examination period, there was one instance in which a retired person received more sick leave than the allowed maximum hours. As a result, an overpayment of \$439.29 was paid to an employee. Once this error was brought to the attention of the agency, the money was returned by the employee prior to the end of fieldwork.”
- “Due to an erroneous payroll entry, an employee was paid \$75.84 at termination for overtime hours that the employee did not work.

- “The longevity counter must be recorded correctly in the Governmental Human Resources System (GHRIS) in order for annual longevity payments to be made in the correct amount. In a review of 25 personnel files, there was one instance in which the longevity counter was not accurately adjusted to reflect an employee's break in State service. This error resulted in an employee receiving a longevity payment of \$300 before he was entitled to receive one. This error was corrected prior to the end of fieldwork.”
- “According to State Personnel Rule 670-X-13-.06, upon separation from service an employee shall be paid for the actual number of days annual leave he has earned, up to a maximum of sixty days. The computed amount will be based on the daily pay rate at the time of separation multiplied by the number of days leave due. In a review of 25 employees who separated from state service, we noted an error with one person in regards to payment for their ending leave balance. An employee resigned from state service with an annual leave balance of 12 hours and 20 minutes. The computed amount of termination pay for annual leave due was \$111.77. After payroll records were carefully searched, it was determined that this employee did not receive payment for the final annual leave balance as reconciled to the GHRIS. After we informed the Department of this error, it paid this individual the amount they were due.”
- “Act Number 97-228, Acts of Alabama, requires that an employer obtain certain information from newly hired, recalled, or rehired individuals and that this information be submitted to the Department of Industrial Relations within seven days. The board had no evidence of completing or submitting New Hire Reporting Forms.”
- “Procedures were not in place to ensure that correct income tax withholdings were deducted. The accuracy of federal and state withholdings could not be verified because Employee's Withholding Allowance Certificates, Federal Forms W-4 and Alabama Forms A-4, could not be located for twelve of sixty employees tested.”
- Licensing
 - Failure to require a Social Security Number on licensee forms
 - Inadequate documentation of each licensee's compliance with requirements necessary to do business in Alabama, including payment of fees
 - Exempting persons not specified in the law as exempted
 - Conditions of licensing not fully met
 - Conditions of licensing different from conditions specified by law
- “We recommended that the Board should ensure that all qualifying criteria are met prior to issuing any license and that proof of having met the criteria are documented in the records of each licensee. Of 67 licensees sampled, 12 did not report their social security numbers, 6 did not have renewal documentation in their files, 24 had no proof of required liability insurance, 4 did not answer

criminal background questions, 2 were not notarized, and one did not have the required educational hours.

- Of 14 licensees sampled, 5 did not include the Social Security number of the person completing the application, 4 lacked proof of insurance, and one application was not notarized.
 - Of 16 schools sampled, 13 had no renewal documentation, 2 did not submit the required documents for licensure, one listed an instructor who held an expired license, and none of the schools submitted a social security number of the person applying for the license. None of the schools had documentation of accreditation or licensure from either the State Department of Education (state school) or Postsecondary Education (private school). The examiner was able to locate state education licensure status for all but 4 schools on the Department of Postsecondary Education website. These 4 schools do not appear to be accredited or licensed by the State Department of Education, the Department of Postsecondary Education, or an accreditation commission or agency recognized by the U. S. Department of Education.
 - Of 13 instructors sampled, none provided their social security numbers, six did not have proof of experience, and one was not a currently licensed massage therapist (LMT).
 - Of 53 insured licensees tested, six were not insured by a company rated “A” or better, as required. The examiner asked the executive director, how the Board checked for the required rating. The executive director stated that he did not know it had to be done and it is not being done. The examiner was able to locate a rating for most of the companies from which licensees had insurance. In the current examination, the discrepancies continued. In a sample of 138 license files, there were ten instances where licenses were renewed without general liability insurance. Six had been renewed for more than one license period without proof of insurance (licenses are renewed biennially). The executive director stated that the Board had directed the license renewals to be issued without requiring these licensees to have general liability insurance, a practice for which the board has no authority in its enabling statutes. There is no exception in the law to the requirement for insurance. Also, in a sample of seven school licensee files, none of the applications included the Social Security number of the person signing the application for licensure/renewal. Social Security numbers are required to be submitted by applicants for original licensure or license renewal. Attorney General’s opinion 2004-022 extends this requirement to the individual or individuals in a corporation, partnership, or limited liability company required to make application for a license.”
- Public Records
 - Failure to obtain and implement a State Records Commission-approved Records Disposition Authority (RDA)

- Failure to report annually the disposition of records destruction
- Charging fees in excess of reasonable cost of copying public records
- “The Board does not have an approved Records Disposition Authority (RDA). The Board’s retention of all records has resulted in a records storage problem. The *Code of Alabama 1975*, Section 41-13-21 provides for the State Records Commission to make a determination as to which state records to be preserved or destroyed and requires state officers not to cause the destruction of state records without prior approval of the commission. To implement this requirement, state agencies consult with the Department of Archives and History, Records Division to develop a plan of records disposition for approval by the State Records Commission. Since we had brought this condition to the Board’s attention in the last examination, we again recommended that the Board contact the Records Division of the Department of Archives and History for consultation and development of an approved RDA. No action was taken, and this condition continued to exist.”
- “The Board did not submit to the State Records Commission a required annual report of records management activity for the 2006 fiscal year. The Board’s Records Disposition Authority, a document approved by the State Records Commission that is required of all agencies and which provides for retention periods for various types of records states on page 3-5, “One condition of this authorization is that the agency submit an annual Records Disposition Authority (RDA) Implementation Report on agency records management activities, including documentation of records destruction, to the State Records Commission in October of each year.” The Board’s executive secretary stated that no report was filed because no reportable activity occurred.”
- “Public records were shredded, placed in bags, and transported in an employee’s personal vehicle. No record was maintained of what was shredded.”
- “During the last examination, we found that the Board charged excessive fees for lists of its licensees. The Board charged \$100 for a list of its licensees with addresses, and \$125 for the same list on labels. According to the Board’s executive director, the fees are based on the cost of maintaining the records from which the list is produced. The Code requires the Board to keep a record of licensees along with their addresses as a part of its duties, and the law authorizes the Board to collect licensing and regulatory fees to carry out this and other duties. It is improper for the Board to impose a charge for providing a copy of the names and addresses of licensees that includes the cost of maintaining the record, because the law has already provided funds to maintain the record. The only appropriate charge for a copy of the names and addresses of licensees is the incremental actual cost of extracting the information and conveying it to the requestor, without regard to the cost of maintaining the record. The Attorney General in his opinion 2004-108 reiterates that fees charged for copies of public records must be based upon actual cost, cannot be imposed to restrict public

access, and that copies are available to businesses to the same extent as to private individuals. We recommended that the Board should limit the fees it charges for copies of the names and addresses of its licensees to the incremental actual cost of producing the copies, without regard to the cost of maintaining the records. During a Board meeting on November 12, 2004, the Board reestablished the fees for lists of its licensees. We found no record that the amended fees were based upon the actual incremental cost of producing a copy, and the fees remain excessive. The Board's executive director stated that part of the fees was to deter mass mailings to licensees."

○ Property/Fixed Assets

- Inadequate controls over property
- Failure to have an accurate property listing
- Failure to capture all information required by law
- Failure to receipt equipment to person with custody

- "Good internal control procedures require that assets belonging to the Commission be properly identified as such with permanent tags or markers. This practice helps facilitate the inventory of the assets and prevents theft or improper use of the equipment. Audit tests revealed that much of the equipment owned by the Commission was not marked or tagged as property of the Commission."

- "The property manager does not conduct a full and complete property inventory at least annually. Also, two leased copy machines with purchase agreements were not included in the Board's property inventory listing. These conditions unnecessarily increase the risk of loss or misuse of state-owned property or property in the custody of the state. The Code of Alabama 1975 Section 36-16-8(1) states: "Except for books, the property manager shall make a full and complete inventory of all nonconsumable personal property and certain other items of personal property deemed important or sensitive enough by the Property Inventory Control Division to be included in the inventory of state property of the value of five hundred dollars (\$500) or more owned by the state and used or acquired by the department or agency. The inventory shall show the complete description, manufacturer's serial number, cost price, date of purchase, location, and custodial agency, responsible officer, or employee, and the state property control marking. A copy of the inventory shall be submitted to the Property Inventory Control Division on October 1 and April 1 of each year." Attorney General's Opinion 97-00035 states that property should be placed on inventory when the state has title to the property and uses the property or when the state has use and control of the property, even though it may not have title to the property."

- "The Commission did not have adequate accountability for its nonconsumable property items. We found the following discrepancies: Written receipts to record the transfer of custody of property from the agency's property manager to its user were not current. Of 24 receipts sampled, ten were for items that had been salvaged but had not been removed from the property inventory records. We also

found three items entrusted to someone other than the property manager for which there was no receipt signed by the person responsible for the item. Property with an acquisition value of \$500 or greater purchased by state agencies is recorded in a common database maintained by the State Auditor. Property with an acquisition cost of less than \$500 is accounted for with agency records according to agency policy. Disposition of all property items is required by law to be disposed of in a formal manner utilizing the state's procedures for disposal. 118 items with a value of less than \$500 were recorded in the agency's inventory records, but the location of these items was not known. Staff stated that the location of these items was unknown for years, but no action was taken to remove them from inventory utilizing the state's disposal procedures."

○ Miscellaneous

- Failure to send annual reports to the governor and/or other officials
- SMART reporting non-compliance
- Insufficient controls over information technology

- "During the last examination period, the Board did not annually report the amount of the unobligated balance in its fund on April 1 of each year, as required by law. The Code states, "Not later than April 5 of each year, the Board shall report the amount of the unobligated balance of the fund on April 1 of such year. The Board shall notify the public and the Department of Revenue if the registration fee imposed by Section 22-30D-6 will be abated or be payable on the following July 1." We recommended that the Board should annually report on its Internet website not later than April 5 of each year its fund's unobligated balance on April 1 of that year. The report should also state whether registration fees will be collected. The report should also be made in writing to the Department of Revenue. [Currently] The unobligated balance of the fund is reported on the Board's internet website after each Board meeting. However, the Board did not send a report to the Department of Revenue and the Board did not notify the public or the Department of Revenue whether the registration fee will be collected, as required by law."

- "Performance data provided by the board to the Department of Finance on the Board's SMART performance report could not be substantiated. Reported cost for the objective of, "Maintain unit cost of licensing and file maintenance" for the 2007 fiscal year could not be verified from the Board's records. In addition, the Board's performance report stated that four newsletters were published, although only two newsletters were published." "In the State's SMART budgeting effort, each agency is required to report its performance to the Department of Finance. For the 2007 fiscal year, there were no records from which to verify data reported by the Board regarding its objective, "Decrease money spent on reproduction and mailing paper forms." The Board reported actual performance of "\$1,500 per thousand"."

- “The Commission appears to have implemented the strategic planning and other applicable requirements of the SMART Governing program except with regards to its procedures over its preparation of the Quarterly Performance Report that is required by the SMART Governing program. When preparing the Quarterly Performance Report, an effective internal control system would ensure that documentation supporting amounts included in the report is available and maintained. When testing the Quarterly Performance Report of the Commission for the 2006-2007 fiscal year, I found that documentation was not always available to support amounts included in the report.”
- “We reviewed the internal control policies and procedures affecting the Board's ability to provide reasonable assurance that data, programs, systems, and related information will be protected from unauthorized use, disclosure, modification, damage, loss or other inappropriate access by persons or programs. We determined that these controls were not adequate to provide such assurance. Lack of adequate controls over agency data increases the risk of unauthorized use, disclosure, modification, damage, loss or inappropriate access by persons or programs.”

CONTACT LIST

<i>Contact</i>	<i>Available Information</i>	<i>Contact Information</i>	<i>Notes</i>
Alabama Interactive	Renewing licenses on-line	www.alabamainteractive.org	The State of Alabama has a contract with this vendor. Interested agencies must sign a Memorandum of Understanding and set up a fee schedule, etc.
Alabama Government Main Web Site	Personnel and agency listings and other general information	www.alabama.gov	
Archives & History, Dept of, Governmental Records Division	Public records, records retention	www.archives.alabama.gov (334) 242-4452	Click on “For State and Local Officials”
Attorney General’s Office	Legal counsel/representation, hearing officers, AG Opinions	www.ago.alabama.gov (334) 242-7300	
Auditor’s Office (State Auditor)	State property	www.auditor.alabama.gov (334) 242-7028	
Budget Office (Finance Dept)	Budget request and associated information	www.budget.alabama.gov (334) 242-7230	
Comprehensive Annual Financial Report (CAFR)	Statewide financial reporting	http://comptroller.alabama.gov/pages/contacts.aspx#Financial_Reporting (334) 242-2193	Contact personnel
Comptroller’s Office (Finance Dept)	Fiscal Policy and Procedures Manual	http://comptroller.alabama.gov/pages/proc_manual.aspx (334) 242-7160	Downloadable manual
GHRs (Payroll) (Comptroller’s Office)	Payroll issues	http://comptroller.alabama.gov/pages/contacts.aspx#GHRs/Payroll (334) 242-2200	Contact personnel

<i>Contact</i>	<i>Available Information</i>	<i>Contact Information</i>	<i>Notes</i>
Central Mail (Finance Dept)	Information on services from the state's Central Mail Room	http://sd.alabama.gov/pages/mail/ (334) 242-2773	
Computer Training (Information Services Division of Dept of Finance)	Computer classes	http://isd.alabama.gov/customer_service/customer_service_center.aspx?sm=a_e (ISD Help Desk) (334) 215-8256	
Deposits of money	To deposit money collected in the name of the state or its agencies	(334) 242-7520	
Lands – state lands - Conservation and Natural Resources, Dept of (DCNR) – State Lands Division	To sell or lease state lands, to report inventory of state owned lands	http://www.outdooralabama.com/public-lands/stateLands/ (334) 242-3484	
Economic and Community Affairs, Dept of (ADECA)	State recycling program	www.adeca.alabama.gov Van Johnson (334) 242-5332	
Employees Insurance Board (SEIB)	State Employees Health Insurance Plan	www.alseib.org (334) 833-5900 1-800-513-1384	
Ethics Commission	Filing statements of economic interests, notices of representation for fee, notices of contract, Reporting violations of the ethics law, Training Opinions regarding ethics law	www.ethics.alabama.gov (334) 242-2997	
Examiners of Public Accounts	Copies of issued reports, questions relative to audits, filing disclosure notices relative to contracts	www.examiners.alabama.gov (334) 242-9200	

<i>Contact</i>	<i>Available Information</i>	<i>Contact Information</i>	<i><u>Notes</u></i>
Finance Department	Fiscal Policy and Procedure	www.finance.alabama.gov (334) 242-7160	
Governor's Office Appointment Secretary	Notify Governor's Office of vacancies in membership	www.governor.alabama.gov (334) 242-7100	
IT Services (Information Services Division of Dept of Finance)	Information Technology and communication services, including phone, fax, internet, computers, computer systems, etc.	www.isd.alabama.gov (334) 242-3045	
Legislative Fiscal Office	State fiscal information, legislator's guide to Alabama taxes	www.lfo.alabama.gov (334) 242-7950	
Legislative Reference Service (Administrative Procedure Division)	Instruction and filing of Administrative Rules Administrative rules of all agencies	www.alabamaadministrativecode.state.al.us (334) 242-7570	
Legislative Reference Service (bill drafting and other services)	Contact personnel	http://www.lrs.state.al.us/	
Motor Pool (Finance Dept)	Reservation of state motor vehicle	www.sd.alabama.gov	A State Motor Pool vehicle may be reserved online
Peace Officers Standards and Training Commission	Verify status of law enforcement employees regarding minimum standards qualifications	http://www.apostc.state.al.us/ (334) 242-4045	

<i>Contact</i>	<i>Available Information</i>	<i>Contact Information</i>	<i><u>Notes</u></i>
Personnel Department		www.personnel.alabama.gov (334) 242-3389	
Employee Records	File documents regarding employee personnel transactions, (hiring, terminating, promotions, raises, etc.)	(334) 242-3279	
Training	Training on personnel issues	(334) 242-3279	
Purchasing Division (Finance Dept)	Information and guidance regarding purchases	www.purchasing.alabama.gov (334) 242-7250	Lists are available for products and services and professional services
Retirement Systems of Alabama (RSA)	State Employees Retirement System	www.rsa.state.al.us (334) 832-4140 1-800-214-2158	
Risk Management Division (Finance Dept)	Insurance and bonding	www.riskmgt.alabama.gov (334) 223-6120	
SAFE Program (Collateralization of deposits of state funds) (State Treasurer)	Collateralization of agency funds held in banks in excess of the FDIC Coverage	http://www.treasury.alabama.gov/Content/Safe_Welcome_Letter.htm (334) 242-7506	

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Secretary of State (Administrative Services)	Board/Commission Member Listings (can update from website)	https://www.boards.alabama.gov/bcPublic/bcPublic.aspx (334) 242-7200	Boards must supply a listing of board members and vacancies on the board to the Secretary of State by December 4, 2006. Boards must also register with the Secretary of State to comply with Open Meetings Act requirements for public notification of board meetings.
Secretary of State (Open Meetings Act)	Post notices of board/commission meetings required by the Open Meetings Act	https://www.openmeetings.alabama.gov/generalpublic/publicdefault.aspx	Notices for meetings of boards and commissions with statewide jurisdiction are required by law to be posted to this website.
Space Management Div) (Finance Dept)	Office space – leases	http://finance.alabama.gov/pages/SpaceM.aspx (334) 242-2773	Contact if need space for operations
Surplus Property Division (ADECA)	Information on disposal of unworkable or unneeded property	http://www.adeca.alabama.gov/Surplus%20Property/default.aspx	
Telephone Directory (State Operator)	Telephone listings	http://info.alabama.gov/phone_directory.aspx (334) 242-8000	
SMART Budgeting	Information on SMART budgeting and forms	www.smartbudgeting.alabama.gov	May contact the Budget Office with questions

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Travel Mileage Rate (Comptroller's Office)	Travel Mileage Rates	http://comptroller.alabama.gov/pages/memos.aspx	Memos setting the mileage rate back to 2002

Other Resources*

<i>Contact</i>	<i>Available Information</i>	<i>Contact Information</i>	<i>Notes</i>
Auburn University Montgomery (AUM) Center for Government	Governmental Accountant and Auditor Training (GAAT) Certified Public Manager (CPM) Program	www.outreach.aum.edu	
Council on Licensure, Enforcement, and Regulations (CLEAR)	Training on regulatory board issues and investigations	www.clearhq.org (859) 269-1601	
Center for Consumer Advocacy	Training for consumer members on consumer issues	www.cacenter.org (202) 462-1174	
Alabama Press	Information on public access	www.alabamapress.org	Select "Legal Issues"

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